

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK



LOCAL RULES OF CIVIL PROCEDURE
(Effective May 1, 2003)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

IN RE ADOPTION OF LOCAL RULES OF CIVIL PROCEDURE

FOR THE

WESTERN DISTRICT OF NEW YORK

These rules were prepared by the Judges of the United States District Court for the Western District of New York, in collaboration with the federal bar.

It is so ordered that the rules set forth herein are adopted as the Rules of Civil Procedure of the United States District Court for the Western District of New York together with all of the amendments to date to take effect on May 1, 2003 and to supersede all general rules previously adopted.

/s/ Richard J. Arcara
RICHARD J. ARCARA
Chief United States District Judge

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge

/s/ David G. Larimer
DAVID G. LARIMER
United States District Judge

/s/ John T. Curtin
JOHN T. CURTIN
Senior United States District Judge

/s/ William M. Skretny
WILLIAM M. SKRETNY
United States District Judge

/s/ John T. Elfvin
JOHN T. ELFVIN
Senior United States District Judge

/s/ Michael A. Telesca
MICHAEL A. TELESCA
Senior United States District Judge

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES DISTRICT COURT JUDGES

Richard J. Arcara, Chief Judge U.S. Courthouse, Buffalo, NY
David G. Larimer U.S. Courthouse, Rochester, NY
William M. Skretny U.S. Courthouse, Buffalo, NY
Charles J. Siragusa U.S. Courthouse, Rochester, NY
John T. Curtin, Senior Judge U.S. Courthouse, Buffalo, NY
John T. Elfvin, Senior Judge U.S. Courthouse, Buffalo, NY
Michael A. Telesca, Senior Judge U.S. Courthouse, Rochester, NY

UNITED STATES BANKRUPTCY JUDGES

John C. Ninfo II, Chief Judge U.S. Courthouse, Rochester, NY
Michael J. Kaplan U.S. Courthouse, Buffalo, NY
Carl L. Bucki U.S. Courthouse, Buffalo, NY

UNITED STATES MAGISTRATE JUDGES

Leslie G. Foschio U.S. Courthouse, Buffalo, NY
Hugh B. Scott U.S. Courthouse, Buffalo, NY
Jonathan W. Feldman U.S. Courthouse, Rochester, NY
H. Kenneth Schroeder, Jr U.S. Courthouse, Buffalo, NY
Marian W. Payson U.S. Courthouse, Rochester, NY
Victor E. Bianchini U.S. Courthouse, Buffalo, NY

CLERK OF UNITED STATES DISTRICT COURT

Rodney C. Early Buffalo, NY

CHIEF DEPUTY CLERK

Jeanne M. Spampata Buffalo, NY

DEPUTY-IN-CHARGE

Rachel B. Bandych Rochester, NY

CLERK OF UNITED STATES BANKRUPTCY COURT

Paul R. Warren Buffalo, NY

CHIEF DEPUTY CLERK

Michelle A. Pierce Buffalo, NY

DEPUTY-IN-CHARGE

Todd M. Stickle Rochester, NY

UNITED STATES ATTORNEY

Michael A. Battle Buffalo, NY

ASSISTANT UNITED STATES ATTORNEY-IN-CHARGE

Bradley E. Tyler Rochester, NY

FEDERAL PUBLIC DEFENDER

William G. Clauss Rochester, NY

FIRST ASSISTANT FEDERAL PUBLIC DEFENDER

Joseph B. Mistrett Buffalo, NY

CHIEF PROBATION OFFICER

Joseph A. Giacobbe Buffalo, NY

DEPUTY CHIEF PROBATION OFFICER

Thomas J. McGlynn Rochester, NY

UNITED STATES MARSHAL

Peter A. Lawrence Rochester, NY

CHIEF DEPUTY UNITED STATES MARSHAL

John Palillo Buffalo, NY

TERRITORIAL JURISDICTION

Counties of:

Allegany	Genesee	Orleans	Wyoming
Cattaraugus	Livingston	Schuyler	Yates
Chautauqua	Monroe	Seneca	
Chemung	Niagara	Steuben	
Erie	Ontario	Wayne	

With the waters thereof.

Plans adopted by the United States District Court for the Western District of New York

Copies of the following plans that have been adopted by the Court are available on request in the Clerk's offices in Rochester and Buffalo¹:

- Amended Plan for the Disposition of Pro Se Cases
- Court Reporter Management Plan
- Criminal Justice Act Plan
- Jury Plan
- Plan for the Administration of the District Court Fund
- Revised Plan for the Prompt Disposition of Criminal Cases

¹The listed plans are for reference only and may be modified or abrogated by the Court in its discretion.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

LOCAL RULES OF CIVIL PROCEDURE

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RULE 1.1

TITLE

These rules shall be known as the Local Rules of Civil Procedure for the United States District Court for the Western District of New York. These rules supplement the Federal Rules of Civil Procedure and are numbered in accordance therewith.

RULE 1.2

THE "COURT"

Wherever in these rules reference is made to the "Court", "Judge", or similar term, such term shall be deemed to include a Magistrate Judge unless the context requires otherwise.

RULE 5.1

FILING CASES

(a) Every civil action shall be filed with the Clerk. The Clerk shall assign each civil action to a District Judge and a Magistrate Judge.

(b) For purposes of assigning cases other than those filed by *pro se* inmate litigants, the Western District of New York is divided into two areas. Cases arising in the eight western counties: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming (the "Buffalo area"), shall ordinarily be assigned to a District Judge and a Magistrate Judge in Buffalo. Cases arising in the nine eastern counties: Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates (the "Rochester area"), shall ordinarily be assigned to a District Judge and a Magistrate Judge in Rochester. The assignment within these areas shall ordinarily be by random selection.

(c) Cases filed by *pro se* inmate litigants shall be assigned to either a District Judge or Magistrate Judge. All cases filed by a *pro se* plaintiff/petitioner shall be assigned to the same District Judge or Magistrate Judge to whom any case previously filed by the same plaintiff/petitioner had been assigned. In the event that the assignment is to a Magistrate Judge, the parties shall be advised of the assignment and their right to consent to final disposition of the case by the Magistrate Judge pursuant to 28 U.S.C. § 636(c). If one or more of the parties refuse or fail to consent to proceed to disposition by the Magistrate Judge, the case will be randomly assigned to a District Judge, who may refer any matters concerning the case to the original Magistrate Judge pursuant to 28 U.S.C. § 636(b).

(d) A completed civil cover sheet on a form available from the Clerk shall be submitted with every complaint, notice of removal or other document initiating a civil action. This requirement is

solely for administrative purposes; matters appearing on the civil cover sheet have no legal effect in the action.

(e) In a civil proceeding, any non-governmental corporate party must file two copies of a statement identifying all its parent companies and any publicly held corporation that owns 10% or more of its stock or stating that it has no parent companies. For purposes of this rule, a parent company means a publicly held corporation that controls the party (directly or through others) or owns 10% or more of the party's stock. A party must file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the Court. A party must promptly file a supplemental disclosure statement upon any change in this information.

(f) It shall be the continuing duty of each attorney appearing in any civil case to bring promptly to the attention of the Clerk all facts which said attorney believes are relevant to a determination that said case and one or more pending civil or criminal cases should be heard by the same judge, in order to avoid unnecessary duplication of judicial effort. As soon as the attorney becomes aware of such relationship, said attorney shall notify the Clerk by letter, who shall transmit that notification to the judges to whom the cases have been assigned. If counsel fails to comply with this rule, the Court may assess reasonable costs directly against counsel whose action has obstructed the effective administration of the Court's business.

(g) Pursuant to 28 U.S.C. §157, all cases under Title 11 of the United States Code and all proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the United States Bankruptcy Court for the Western District of New York. Any party seeking to file papers asserting a claim under Title 11 shall, at the time of filing, notify the Clerk in writing that the papers contain such a claim. For purposes of this section, the requirement for written notification shall be satisfied by a letter addressed to the Clerk with copies to all counsel or parties, if acting *pro se*.

(h) Any party asserting a claim, cross-claim or counterclaim under the Racketeer Influenced & Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., shall file and serve a "RICO Case Statement" under separate cover as described below. This statement shall be filed contemporaneously with those papers first asserting the party's RICO claim, cross-claim or counterclaim, unless, for exigent circumstances, the Court grants an extension of time for filing the RICO Case Statement. A party's failure to file a statement may result in dismissal of the party's RICO claim, cross-claim or counterclaim. The RICO Case Statement must include those facts upon which the party is relying and which were obtained as a result of the reasonable inquiry required by Federal Rule of Civil Procedure 11. In particular, the statement shall be in a form which uses the numbers and letters as set forth below, and shall state in detail and with specificity the following information.

(1) State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c) and/or (d).

(2) List each defendant and state the alleged misconduct and basis of liability of each defendant.

(3) List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.

(4) List the alleged victims and state how each victim was allegedly injured.

(5) Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering shall include the following information:

(A) List the alleged predicate acts and the specific statutes which were allegedly violated;

(B) Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts;

(C) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities the “circumstances constituting fraud or mistake shall be stated with particularity.” Fed. R. Civ. P. 9(b). Identify the time, place and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

(D) State whether there has been a criminal conviction for violation of each predicate act;

(E) State whether civil litigation has resulted in a judgment in regard to each predicate act;

(F) Describe how the predicate acts form a “pattern of racketeering activity”; and

(G) State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.

(6) Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

(A) State the names of the individuals, partnerships, corporations, associations, or other legal entities, which allegedly constitute the enterprise;

(B) Describe the structure, purpose, function and course of conduct of the enterprise;

(C) State whether any defendants are employees, officers or directors of the alleged enterprise;

(D) State whether any defendants are associated with the alleged enterprise;

(E) State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and

(F) If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

(7) State and describe in detail whether you are alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

(8) Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

(9) Describe what benefits, if any the alleged enterprise receives from the alleged pattern of racketeering.

(10) Describe the effect of the activities of the enterprise on interstate or foreign commerce.

(11) If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:

(A) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and

(B) Describe the use or investment of such income.

(12) If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

(13) If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:

(A) State who is employed by or associated with the enterprise; and

(B) State whether the same entity is both the liable “person” and the “enterprise” under § 1962(c).

(14) If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.

(15) Describe the alleged injury to business or property.

(16) Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

(17) List the damages sustained for which each defendant is allegedly liable.

(18) List all other federal causes of action, if any, and provide the relevant statute numbers.

(19) List all pendent state claims, if any.

(20) Provide any additional information that you feel would be helpful to the Court in processing your RICO claim.

RULE 5.2

PRO SE ACTIONS

(a) In any action based upon social security claims, employment discrimination, and non-prisoner or prisoner civil rights, in which a plaintiff files *pro se* (which means without assistance of an attorney), the complaint should be filed on the forms provided in the Clerk's office or found on the Court's web site at www.nywd.uscourts.gov. A complaint not filed on the appropriate form may be returned to the plaintiff for refile on the proper form if a Judge of the Court so directs. Leave to amend the complaint at a later date shall be freely granted in accordance with Federal Rule of Civil Procedure 15.

(b) Habeas corpus petitions under 28 U.S.C. §§ 2241, 2254 and 2255 shall be filed on forms available in the Clerk's office upon the petitioner's request or found on the Court's web site at www.nywd.uscourts.gov. Section 2255 cases are to be filed without charge. A petition not filed on the appropriate form may be returned to the petitioner for refile on the proper form if a Judge of the Court so directs.

(c) An indigent *pro se* plaintiff or petitioner (28 U.S.C. §§ 2241 or 2254) may seek *in forma pauperis* status to file his or her action without payment of fees by filing the form affidavit available in the Clerk's office or found on the Court's web site at www.nywd.uscourts.gov, along with the complaint/petition. The case will be given a civil docket number and the *in forma pauperis* application will be submitted to a Judge of the Court. If the Judge denies *in forma pauperis* status, the plaintiff/petitioner will by written order be given notice that the case will be dismissed without prejudice if the fee is not paid by the date specified in the order.

(d) A party appearing *pro se* must furnish the Court with a current address at which papers may be served on the litigant. Papers sent to this address will be assumed to have been received by plaintiff.

In addition, the Court must have a current address at all times. Thus, a *pro se* litigant must inform the Court immediately in writing of any change of address. Failure to do so may result in dismissal of the case with prejudice.

(e) It is the responsibility of all *pro se* litigants to become familiar with, to follow, and to comply with the Federal Rules of Civil Procedure and the Local Rules of Civil Procedure, including those rules with special provisions for *pro se* litigants such as Local Rules 5.2(b), 7.1(a)(2), and 16.1. Failure to comply with the Federal Rules of Civil Procedure and Local Rules of Civil Procedure may result in the dismissal of the case with prejudice.

RULE 5.3

HABEAS CORPUS

Petitions under 28 U.S.C. §§ 2254 and 2255 shall be filed pursuant to the Rules Governing Section 2254 Cases in the United States District Courts and the Rules Governing Section 2255 Proceedings for the United States District Courts.

RULE 5.4

SEALING OF COMPLAINTS AND DOCUMENTS IN CIVIL CASES

(a) Except when otherwise required by statute or rule, there is a presumption that Court documents are accessible to the public and that a substantial showing is necessary to restrict access.

(b) Upon the proper showing, cases may be sealed in their entirety, or only as to certain parties or documents, when they are initiated, or at various stages of the proceedings. The Court may, on its own motion, enter an order directing that a document, party or entire case be sealed. A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reasons for sealing, together with a proposed order for approval by the assigned Judge. The proposed order shall include language in the “ORDERED” paragraph stating the referenced document(s) to be sealed. Upon approval of the sealing order by the assigned Judge, the Clerk shall seal the document(s). Upon denial of a sealing application, the Clerk shall notify the party of such decision. The party shall have five business days from the date of the notice to withdraw the document(s) submitted for sealing or appeal the decision denying the sealing request. If the party fails to withdraw the document(s) or otherwise appeal after the expiration of five business days, the document(s) shall be filed by the Clerk and made a part of the public record.

(c) When the sealing of a civil complaint is appropriate under either statute or this rule, the Clerk shall inscribe in the public records of the Court only the case number, the fact that a complaint was filed under seal, the name of the District Judge or Magistrate Judge who ordered the seal, and (after assignment of the case to a District Judge and a Magistrate Judge in the normal fashion) the names of the assigned District Judge and the assigned Magistrate Judge.

(d) A complaint presented for filing with a motion to seal and a proposed order shall be treated as a sealed case, pending approval of the order.

(e) Documents authorized to be filed under seal or pursuant to a protective order must be presented to the Clerk in envelopes bearing sufficient identification. The envelopes shall not be sealed until the documents inside have been filed and docketed by the Clerk’s office.

(f) Unless an order of the court otherwise directs, all sealed documents will remain sealed after final disposition of the case. The party desiring that a sealed document be unsealed after disposition of the case must seek such relief by motion on notice.

RULE 5.5

PAYMENT OF FEES IN ADVANCE

(a) The Clerk shall not be required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for the particular service is paid to him or her in advance. A schedule of fees is available in the office of the Clerk and on the Court's website at www.nywd.uscourts.gov.

(b) Pursuant to 28 U.S.C. § 1915, the Court may authorize the commencement, prosecution or defense of any action or appeal therefrom without prepayment of fees, costs or security therefor by a person who is unable to pay such fees, costs or security in accordance with Local Rule of Civil Procedure 5.2(c).

RULE 7.1

SERVICE AND FILING OF PAPERS

(a) All pleadings, notices and other papers shall be served and filed in accordance with the Federal Rules of Civil Procedure. The party or a designee shall declare, by affidavit, sworn statement or certification, that he or she has provided all other parties in the action with all documents being filed with the Court.

(1) Pursuant to Federal Rule of Civil Procedure 5(d), disclosures under Federal Rule of Civil Procedure 26(a)(1) and (2) and depositions, interrogatories, requests for documents or to permit entry upon land, requests for admissions, and answers and responses thereto shall not be filed with the Clerk's office until they are used in a proceeding or the Court otherwise orders. Notwithstanding, all discovery materials in *pro se* cases shall be filed with the Court.

(2) A party seeking or opposing any relief under the Federal Rules of Civil Procedure shall file only such portion(s) of a deposition, interrogatory, request for documents, request for admission, or other material that is pertinent to the application.

(3) A party seeking to include in a record on appeal material which was not previously filed shall apply to the Court for an order requiring the Clerk to file such material. The party may make such application by motion or by stipulation of counsel.

(b) All orders, whether issued on notice or *ex parte*, together with the papers on which they were granted, shall be filed forthwith.

(c) Except for papers filed in connection with a summary judgment motion, the timing for which is set forth in Rule 56.1(e), a moving party who wishes to file reply papers shall file and serve the notice of motion and supporting papers at least fifteen business days prior to the return date of the motion. The notice of motion shall also state that the moving party intends to file and serve reply papers and that the opposing party is therefore required to file and serve opposing papers at least eight business days prior to the return date. Reply papers shall be filed and served at least three business days before the return date. Under all other circumstances, and except as ordered otherwise by the Court, notices of motion together with supporting affidavits and memoranda shall be served on the parties and filed with the Clerk at least ten business days prior to the return date of the motion. Answering affidavits and memoranda shall be served and filed at least three business days prior to the return date. Sur-reply papers shall not be permitted unless otherwise ordered by the Court.

(d) A party seeking to shorten the notice requirements prescribed in subparagraph (c) must make a motion for an expedited hearing setting forth the reasons why an expedited hearing is required. The motion for an expedited hearing may, for cause shown, be made *ex parte*, and must be accompanied by:

(1) the motion that such party is seeking to have heard on an expedited basis, together with supporting affidavits and memorandum of law; and

(2) a proposed order granting an expedited hearing, with dates for service of the motion (by personal service or overnight mail), responding papers, and the hearing left blank to be filled in by the Court.

Immediately after filing the motion for an expedited hearing (and accompanying documents) with the Clerk's office, counsel for the moving party shall personally deliver courtesy copies of such motion to chambers and await further instructions from the Court. In the event that the moving party is represented by out-of-town counsel who is unable to personally deliver courtesy copies, counsel shall mail such courtesy copies directly to chambers and shall contact chambers by telephone to request a waiver of this requirement.

(e) Absent leave of Court or as otherwise specified in this rule, upon any motion filed pursuant to Federal Rules of Civil Procedure 12, 56 or 65(a), the moving party shall file and serve with the motion papers a memorandum of law and an affidavit in support of the motion and the opposing party shall file and serve with the papers in opposition to the motion an answering memorandum and a supporting affidavit. Failure to comply with this subdivision may constitute grounds for resolving the motion against the non-complying party.

(f) Without prior approval of the Court, briefs or memoranda in support of or in opposition to any motion shall not exceed twenty-five pages in length and reply briefs shall not exceed ten pages in length and shall comply with the requirements of Local Rule of Civil Procedure 10. Applications to exceed these page limits shall be made in writing by letter to the Court, with copies to all counsel, at least three business days before the date on which the brief must be filed.

(g) Good cause shall be shown for the making of any application *ex parte*. The papers in support of such application shall state attempts made to resolve the dispute through a motion on notice and/or state why notice of the application for relief may not be given.

(h) No filed document shall be removed from the Court except on order of the Court.

(i) Unless otherwise specified by statute or rules or requested by the Court, only the original of any papers shall be accepted for filing. Parties requesting date-stamped copies of documents filed with the Clerk must provide a self-addressed, adequately-sized envelope with proper postage affixed.

(j) Service of all papers other than a subpoena or a summons and complaint shall be permitted by dispatching the paper to the attorney by overnight delivery service at the address designated by the attorney for that purpose, or if none is designated, at the attorney's last known address. Service by overnight delivery service shall be complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. Where a period of time prescribed by either the Federal Rules of Civil Procedure or these rules is measured from the service of a paper and service is by overnight delivery, one business day shall be added to the prescribed period. "Overnight delivery service" means any delivery service which regularly accepts items for overnight delivery to any address within the jurisdiction of the Court.

(k) No papers shall be served by electronic means unless, in accordance with Federal Rule of Civil Procedure 5(b)(2)(D), the party or parties being served has filed a written consent to accept service by this means. No papers shall be filed with the Clerk by electronic means.

RULE 7.2

MOTION TO SETTLE AN ORDER

When counsel are unable to agree as to the form of a proposed order, the prevailing party may move, upon three days notice to all parties, to settle the order. Costs and attorneys' fees may be awarded against an attorney whose unreasonable conduct is deemed to have required the bringing of such a motion.

RULE 7.3

ORAL ARGUMENT

In its discretion, the Court may require written briefs before hearing argument on motions made other than pursuant to Federal Rules of Civil Procedure 12, 56 and 65(a) [See Local Rule of Civil Procedure 7.1(e)], and may notify the parties that oral argument shall not be heard on any given motion.

RULE 10

FORM OF PAPERS

(a) All text and footnotes in pleadings, motions, legal memoranda and other papers shall be plainly and legibly written, typewritten in a font size at least 12-point type, printed or reproduced, without erasures or interlineations materially defacing them, in ink on durable white 8½" x 11" paper of good quality and fastened. All text in such documents shall be double-spaced.

(b) All papers shall be endorsed with the name of the Court, the title of the case, the proper docket number and the name or nature of the paper, in sufficient detail for identification. In any initial or amended pleading, counsel, or litigants acting *pro se*, must print or type the names of all parties in the case caption with accurate capitalization and spacing. Additionally, counsel or litigants acting *pro se* must number the parties in the case caption. All papers shall be signed by an attorney or by the litigant if appearing *pro se*, and the name, address and telephone number of each attorney or litigant so appearing shall be typed or printed thereon. All papers shall be dated and paginated.

RULE 11

SANCTIONS

(a) **Dismissal or Default.** Failure of counsel for any party, or a party proceeding *pro se*, to appear before the Court at a conference, or to complete the necessary preparations, or to be prepared to proceed to trial at the time set may be considered an abandonment of the case or a failure to prosecute or defend diligently and an appropriate order for sanctions may be entered against the defaulting party with respect to either a specific issue or the entire case.

(b) **Imposition of Costs on Attorneys.** Upon finding that sanctions pursuant to section (a) would be either inadequate or unjust as to the parties, the Judge may, in accordance with 28 U.S.C. § 1927, assess reasonable costs directly against counsel whose action has obstructed the effective administration of the Court's business.

(c) **Assessment of Jury Costs.** In any civil case in which a settlement is reached or in which the Court is notified of settlement later than the close of business on the last business day before jurors are to appear for jury selection, the Court, in its discretion, may impose the Court's costs of compensating the jurors for their needless appearance against one or more of the parties, or against one or more counsel, as to the Court appears proper. Funds so collected shall be deposited by the Clerk into the Treasury of the United States.

RULE 16.1

PRE-TRIAL PROCEDURES IN CIVIL CASES

(a) **Discovery Conferences and Scheduling Orders.**

(1) After issue is joined, the Court shall schedule a Rule 16 pre-trial discovery conference ("first discovery conference") to be held within sixty days of issue being joined in all cases except an action, petition or proceeding:

(A) for review on an administrative record;

(B) to enforce or quash an administrative summons or subpoena;

(C) by the United States to recover benefit payments or collect on a student loan;

(D) ancillary to proceedings in other courts;

(E) to enforce an arbitration award;

(F) brought by a *pro se* prisoner involving civil rights;

(G) involving social security; and

(H) involving *habeas corpus*.

(2) Prior to the first discovery conference, the parties shall confer as required by Federal Rule of Civil Procedure 26(f) and Local Rule of Civil Procedure 26, and shall file with the Court a written report consistent with the requirements of Federal Rule of Civil Procedure 26(f).

(3) At the first discovery conference, counsel for each party shall also be prepared to discuss meaningfully the following matters:

(A) possibility of settlement;

(B) factual and legal bases for all claims and defenses, and the identity of issues in dispute or those that can be agreed upon;

(C) specific relief requested;

(D) intended discovery and proposed methods to limit and/or decrease time and expense thereof, including the willingness of the parties as a courtesy to exchange discovery demands electronically in addition to the service of paper copies;

(E) willingness to consent to the referral of any or all matters to a Magistrate Judge pursuant to 28 U.S.C. § 636 and Local Rule of Civil Procedure 72.2;

(F) suitability of case for alternative dispute resolution, and identity of the process thereof;

(G) the need for adopting special procedures for managing difficult actions involving complex issues, multiple parties or difficult legal questions;

(H) the appropriateness of an advanced trial date and limited discovery in an uncomplicated action; and

(I) the use of experts during discovery and at trial.

(4) Pursuant to Federal Rule of Civil Procedure 16(b), following the first discovery conference, the Court shall issue an order providing:

(A) a discovery cut-off date;

(B) a date for a settlement conference (“first settlement conference”) to be held before the Court;

(C) a time limitation on the joinder of other parties;

(D) a time limitation on the commencement of third-party practice;

(E) a time limitation on the filing of all pre-trial motions;

(F) a time limitation on the disclosure of expert witnesses;

(G) any other matter decided or agreed upon at the first discovery conference;

(H) an advanced trial date and limited discovery in an appropriate, uncomplicated action, and

(I) that no further or additional discovery, joinder, third-party practice, or non-dispositive motions shall be permitted after the close of discovery except by leave of the Court for good cause shown in writing; provided, however, that if the Court so directs, a request for an extension of the deadline for the completion of discovery shall be signed by both the attorney and the party making the request.

(5) Additional pretrial conferences may be scheduled in the discretion of the Court, *sua sponte*, or at the request of a party. At any subsequent discovery conference, the attorneys shall provide a status update and a time-table for the remaining discovery to be completed within the discovery period.

(b) Settlement Conferences.

(1) Prior to the first settlement conference, the parties shall exchange a written settlement demand and a response. The settlement demand shall be provided to the opposing party or parties at least ten calendar days prior to the first settlement conference, and a response to the demand shall be provided at least five calendar days prior to the first settlement conference, in order to allow the parties meaningful opportunity to consider and discuss the settlement proposals.

(2) At the first settlement conference, the attorneys shall be present and shall be prepared to state their respective positions to the Court. Each plaintiff shall communicate a demand for settlement to the Court, and each defendant shall be prepared to communicate a response. The attorneys shall have consulted with their respective clients regarding their settlement positions prior to the settlement conference. Likewise, in cases involving insurance coverage, defense counsel shall have consulted with the insurance carrier regarding its position prior to this settlement conference. Each party shall submit in writing, or be prepared to discuss, the undisputed facts and legal issues relevant to the case, and the legal and factual issues about which the party believes there is a dispute.

(3) If a settlement is not reached at the first settlement conference, the Court may schedule additional settlement conferences from time to time as appropriate.

(4) Upon notice by the Court, representatives of the parties with authority to bind them in settlement discussions, or the parties themselves, must be present or available by telephone during any settlement conference.

(c) Pre-trial Conference.

(1) Within thirty days after the close of discovery, the District Judge, or if the parties have consented to disposition by the Magistrate Judge, the Magistrate Judge, shall hold a pre-trial conference for the purpose of setting a cut-off date for remaining motions, setting a firm trial date, and discussing settlement. Except for good cause shown in writing, such motion cut-off date shall not be more than ninety days after the date of the discovery cut-off and not less than 120 days prior to the trial date. Nothing contained in this rule shall be read as precluding or discouraging dispositive motions at any time during the pendency of a case.

(2) The Court, when appropriate in light of the particular action, may discuss the following additional topics at the pre-trial conference:

(A) simplification of the legal and factual issues, including the elimination of frivolous claims or defenses;

(B) the desirability of amendments to the pleadings;

(C) the possibility of avoiding unnecessary proof through the use of admissions, stipulations, or advance rulings from the Court on the admissibility of evidence;

(D) the use, limitations, and restrictions on the use of expert testimony; and

(E) any other issue the Court may direct the parties to prepare to discuss at the pre-trial conference.

(d) Counsel for each party, no later than ten days before the date of the final pre-trial conference, shall file with the Court and serve upon counsel for all other parties, a pre-trial statement which shall include the following:

(1) a detailed statement of contested and uncontested facts, and of the party's position regarding contested facts;

(2) a detailed statement as to the issues of law involved and any unusual questions relative to the admissibility of evidence together with supporting authority;

(3) proposed jury instructions, if any;

(4) a list of witnesses (other than rebuttal witnesses) expected to testify, together with a brief statement of their anticipated testimony and their addresses;

(5) a brief summary of the qualifications of all expert witnesses, and a concise statement of each expert's expected opinion testimony and the material upon which that testimony is expected to be based;

(6) a list of exhibits anticipated to be used at trial, except exhibits which may be used solely for impeachment or rebuttal;

(7) a list of any deposition testimony to be offered in evidence;

(8) an itemized statement of each element of special damages and other relief sought; and

(9) such additional submissions as the Court directs.

(e) **Marking Exhibits.** Prior to the final pre-trial conference, counsel shall meet to mark and list each exhibit contained in the pre-trial statements. At the conference, counsel shall produce a copy of each exhibit for examination by opposing counsel and for notice of any objection to its admission in evidence.

(f) **Final Pre-trial Conference.**

(1) A final pretrial conference shall be held at the direction of the Court within thirty days of the trial date. Trial counsel shall be present at this conference and shall be prepared to discuss all aspects of the case and any matters which may narrow the issues and aid in its prompt disposition, including:

(A) the possibility of settlement;

(B) motions *in limine*;

(C) the resolution of any legal or factual issues raised in the pre-trial statement of any party;

(D) stipulations (which shall be in writing); and

(E) any other matters that counsel or the Court deems appropriate.

(2) Following the final pre-trial conference, a pre-trial order may be entered as directed by the Court, and the case certified as ready for trial.

(g) **Attorneys Binding Authority.** Each party represented by an attorney shall be represented at each pre-trial, discovery or settlement conference by an attorney who has the authority to bind that party regarding all matters previously identified by the Court for discussion at the conference and all reasonably related matters.

RULE 16.2

ARBITRATION

(a) **Purpose and Scope.** This rule governs the consensual arbitration of civil actions as provided by 28 U.S.C. § 651 *et seq.* Its purpose is to promote the speedy, fair and economical resolution of controversies by informal procedures.

Under this rule, the parties in a civil action may consent to a hearing before an impartial arbitrator or panel of arbitrators who will make a decision as to the issues presented and render an award based upon that decision. Unless the parties otherwise agree, arbitration in this Court is non-binding and parties shall have an opportunity to request a trial *de novo*.

(b) **Actions Subject to this Rule.** This rule shall apply to all civil actions which are filed after the effective date of this rule and by court order to any pending action.

(c) **Notification of Right to Proceed to Arbitration.** After issue is joined, the Clerk shall notify the parties in all civil actions that they may consent to arbitration under this rule.

(d) **Procedure for Consenting to Arbitration.** Parties may consent to arbitration at any time before trial. Such consent must be given freely and knowingly and no party or attorney shall be prejudiced for refusing to participate in arbitration. If no consent is achieved, no Judge or Magistrate Judge to whom the action is or may be assigned shall be advised of the identity of any party or attorney who opposed the use of arbitration.

(1) **Form of Consent.** The form of consent shall be prescribed by the Clerk and shall offer the parties the option of waiving the right to demand trial *de novo*, thus making the results of the arbitration proceeding binding upon them. The plaintiff shall be responsible for securing the execution of the consent form and for filing such form with the Clerk. The Clerk shall not accept for filing any consent form unless it has been signed by all parties to the action or their counsel.

No court approval of the election to arbitrate is required, unless any party or necessary witness is expected to be incarcerated at the time of arbitration.

(2) **Authority of Assigned Judge.**

(A) Every action subject to this rule shall be assigned to a Judge and a Magistrate Judge upon filing in the normal course in accordance with Local Rule of Civil Procedure 5.1 and the assigned Judge and Magistrate Judge shall have authority, in his or her discretion, to conduct status, pretrial and settlement conferences, hear motions, and supervise the action in all other respects in accordance with these rules and the Federal Rules of Civil Procedure, notwithstanding the referral of the action to arbitration.

(B) The Court, upon good cause shown, may modify any of the time periods for any action required under this rule.

(e) **Arbitration Hearing: Scheduling.** After the last responsive pleading is filed in a case wherein the parties have consented to arbitration and such consent has been approved by the Court when necessary, and after selection of the arbitrator(s), the Arbitration Clerk shall send a notice to counsel setting forth the date, time and location for the arbitration hearing. In the event a third party has been brought into the action, the notice shall be sent after filing of the last responsive pleading in the third-party action.

If the parties have filed a request for an immediate hearing, subject to the schedule of the arbitrator(s), one shall be scheduled within thirty days of filing the request. In cases in which the parties have not requested an immediate hearing, the arbitration hearing shall be scheduled no later than 180 days from the date the last responsive pleading was filed. Notwithstanding the foregoing, the arbitration proceeding shall not, in the absence of the parties' consent, commence until thirty days after the disposition by the Court of any motion to dismiss the complaint, motion for judgment on the pleadings, or motion to join necessary parties, if the motion was filed and served within twenty days after the filing of the last responsive pleading. The specified time periods may be modified by the Court for good cause shown.

(f) **Arbitration Hearing: Prehearing Procedures.**

(1) **Disclosure.** Upon entry of the order designating the arbitrator(s), the Arbitration Clerk shall send to each arbitrator a copy of all the pleadings, a copy of the order designating the arbitrator(s), a copy of the court docket sheet and a copy of the Guidelines for Arbitrators. The arbitrator(s) shall forthwith inform all parties, in writing, as to whether the arbitrator(s) or any firm or member of any firm with which the arbitrator(s) is affiliated has (either as a party or attorney), at any time within the past five years, been involved in litigation with or represented any party to the arbitration, or any agency, division or employee of such party.

(2) **Delivery of Exhibits and Witness Lists.** At least ten days prior to the arbitration hearing, each counsel shall deliver to the arbitrator(s) and to adverse counsel pre-marked copies of all exhibits, including expert reports and all portions of depositions and interrogatories (except documents intended solely for impeachment purposes) to which reference will be made at the hearing and a list of all witnesses who are to testify at the hearing. Failure to deliver any exhibit within the prescribed time period may result in the preclusion of that exhibit at the arbitration hearing.

(3) **Continuances.** A matter shall not be adjourned absent extraordinary circumstances and the decision of the arbitrator(s) shall be final. Except as otherwise provided herein, the Arbitration Clerk must be notified immediately of any request for a continuance or any other situation or settlement of the case that would affect the hearing date.

(g) Arbitration Hearing: Conduct of Hearing.

(1) **Place of Holding Hearing.** Hearings shall be held at any location within the Western District of New York designated by the arbitrator(s). Hearings may be held in any courtroom or other room in any federal courthouse made available to the arbitrator(s) by the Clerk. When no such room is made available, the hearing shall be held at any suitable location selected by the arbitrator(s).

(2) **Nature of the Proceeding.** The arbitration hearing shall be conducted informally unless the parties agree to, and the Court approves, a more formal proceeding. Suitable instances for a more formal proceeding include matters in which the parties are bearing the expenses of an expert arbitrator which exceed the fees provided for herein, in which the parties have waived the right to demand a trial *de novo*, or in which the case will turn strictly on the quality of full testimony and other proofs and the Court agrees that a formal arbitration hearing is likely to substantially contribute to the just conclusion of the litigation. In receiving evidence, the arbitrator(s) shall be guided by the Federal Rules of Evidence but shall not thereby be precluded from receiving evidence which he or she considers to be relevant and trustworthy and which is not privileged.

(3) **Authority of Arbitrator(s).** The arbitrator(s) may make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing and may administer oaths and affirmations.

(4) **Testimony.** Necessary testimony shall be given under oath or affirmation and each party shall have the right to cross-examine witnesses except as herein provided.

(5) **Subpoenas.** Attendance of witnesses and production of documents may be compelled in accordance with Federal Rule of Civil Procedure 45.

(6) **Absence of a Party.** The arbitration hearing may proceed in the absence of any party who after notice fails to be present.

(7) **Transcripts.** A party may cause a transcript or recording to be made of the hearing at its expense but shall, at the request and expense of an opposing party, make a copy available to that party.

(8) **Communication with the Arbitrator(s).** There shall be no *ex parte* communication between an arbitrator and any counsel or party on any matter relating to the action except for purposes of scheduling or continuing the hearing.

(h) **Award and Judgment.**

(1) **Award.** The arbitrator(s) shall file the award with the Clerk no more than ten days following the close of the hearing. The award shall state the name or names of the prevailing party or parties and the party or parties against which it is rendered, and the precise amount of money and other relief, if any, awarded including prejudgment interest, costs, fees and attorney's fees if authorized by statute or otherwise. The award shall be in writing and signed by the arbitrator or by at least two members of a panel. No panel member shall participate in the award without having attended the hearing. Arbitrators are not required to issue an opinion explaining the award, but they may do so.

As soon as the award is filed, the Clerk shall serve copies on the parties.

(2) **Judgment.** Unless a party files a demand for trial *de novo* within thirty days of the filing of the award, the Clerk shall enter judgment on the award in accordance with Federal Rule of Civil Procedure 58. A judgment so entered shall have the same force and effect as a judgment of the Court in a civil action, except that it shall not be subject to review in any other court by appeal or otherwise. In cases involving multiple claims or parties, any part of an award for which a party does not request a trial *de novo* in accordance with this rule shall become part of the final judgment with the same force and effect as a judgment of the Court in a civil action, except that it shall not be subject to review in any other court by appeal or otherwise.

(3) **Sealing of Award.** The contents of an arbitration award shall not be made known to any Judge or Magistrate Judge who might be assigned to preside at the trial of the case or rule on potentially case-dispositive motions until the Clerk has entered a final judgment in the action, the action has been otherwise terminated, or except to prepare the report required by § 903(b) of the Judicial Improvements and Access to Justice Act.

(i) **Trial De Novo.**

(1) **Demand.** Within thirty days after the arbitration award is filed, any party may demand a trial *de novo* in the District Court on any or all issues presented at the arbitration hearing. If one party requests a trial *de novo* on fewer than all issues of the case, any other party may, within ten days after the original demand for trial *de novo* is filed, request a trial *de novo* on any or all other issues. The party demanding trial *de novo* shall serve a written demand for a trial *de novo* upon each counsel of record and upon any party not represented by counsel.

(2) **Restoration to the Docket.** Upon filing a demand for a trial *de novo*, the action shall be restored to the Court's docket, trial ready, and treated for all purposes as if it had not been referred to arbitration. The parties shall meet with the Judge or Magistrate Judge to determine a schedule for trial and other proceedings. Any right of trial by jury that a party otherwise would have had is preserved.

(3) **Withdrawal of Demand.** Withdrawal of a demand for trial *de novo* shall be filed with the Clerk and simultaneously served on all parties. Withdrawal of a demand for a trial *de novo* shall reinstate the arbitrator's award, unless within ten days thereafter any other party requests a trial *de novo*.

(4) **Evidence.** No evidence that an arbitration proceeding has occurred, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding shall be admitted at the trial *de novo*.

(5) **Costs.** As a prerequisite to trial *de novo*, the party demanding trial *de novo*, other than a party permitted to proceed *in forma pauperis* or the United States or its agencies or officers, shall deposit with the Clerk an amount equal to the cost of the arbitrator's services paid by the Administrative Office of the United States Courts. If that party fails to obtain judgment in an amount which, exclusive of interest and costs, is more favorable to that party, the Clerk shall retain the deposited monies for payment to the United States Treasury. If the party requesting trial *de novo* obtains a more favorable result, that party shall be reimbursed the prepaid costs.

No penalty for demanding a trial *de novo*, other than as provided in this subdivision, shall be assessed by the Court.

(j) **Arbitrators.**

(1) **Certification Of Arbitrators.** The Chief Judge or a Judge or Judges authorized by the Chief Judge (the "Certifying Judge") shall certify as many arbitrators as he or she determines to be necessary under this rule and shall have complete discretion and authority to thereafter withdraw the certification of any arbitrator at any time.

An individual may be certified to serve as an arbitrator if he or she: (1) is a member of the bar of the State of New York; (2) is admitted to practice before this Court; and (3) is determined by the Certifying Judge to be competent to perform the duties of an arbitrator. Any member of the bar possessing these qualifications who desires to obtain certification to act as an arbitrator shall complete an application form and file it with the Arbitration Clerk. The Arbitration Clerk shall forward such applications to the Certifying Judge for review. The Clerk shall maintain a list of the names and

addresses of all persons certified to act as arbitrators in this Court. Any person whose name appears thereon may ask at any time to have his or her name removed or, if selected to serve, may decline to serve but remain on the roster.

Alternatively, the parties to an action who have consented to arbitration may jointly request certification of an individual who possesses expertise in a field relevant to the particular action (an "expert arbitrator"). The Certifying Judge may, in his or her discretion, certify such an individual to act as an arbitrator for purposes of that particular action only.

Each individual certified to act as an arbitrator shall take the oath required by 28 U.S.C. § 453. An arbitrator is an independent contractor and is subject to the provisions of 18 U.S.C. §§ 201-211 to the same extent as such provisions apply to a special government employee of the Executive Branch. A person may not be barred from the practice of law because he or she is an arbitrator.

(2) Selection of Arbitrators. The parties may elect to proceed to arbitration before a single arbitrator or a panel of three arbitrators to be selected from the list of certified arbitrators maintained by the Clerk, or may jointly request the Court's permission to proceed to arbitration before a single expert arbitrator of their choice.

If the parties choose to proceed to arbitration before an arbitrator or arbitrators from the list maintained by the Clerk, selection of the arbitrator(s) shall be conducted at random by the Clerk or his or her designee. Not more than one member or associate of a firm or association of attorneys shall be appointed to the same panel of arbitrators.

The Clerk shall promptly send notice of the selection of the arbitrator(s) to the person or persons who are selected to serve as arbitrator(s) and to the parties.

On motion made to the Court not later than twenty days before a scheduled arbitration hearing, the Court may disqualify a person selected to be an arbitrator for bias or prejudice as provided in 28 U.S.C. § 144. Further, persons selected to be arbitrators shall disqualify themselves if they could be required to do so under 28 U.S.C. § 455 if they were a justice, judge or magistrate judge.

(3) Compensation of Arbitrators. Pursuant to 28 U.S.C. section 658(a), arbitrators shall be paid \$250 per case if the parties utilize a single arbitrator, or \$100 per arbitrator per case if the parties elect to proceed before a panel of arbitrators. The costs thereof are to be shared equally by the parties to the arbitration. In the event that the parties elect to proceed to arbitration before a single expert arbitrator of their selection, the parties are responsible for any fees assessed by the arbitrator that exceed the fees provided for in this rule.

RULE 23

CLASS ACTIONS

(a) The title of any pleading purporting to commence a class action shall bear the legend "Class Action" next to its caption.

(b) The complaint (or other pleading asserting a claim for or against a class) shall contain next after the jurisdictional grounds and under the separate heading "Class Action Allegations,":

(1) a reference to the portion or portions of Federal Rule of Civil Procedure 23 under which it is claimed that the action is properly maintainable as a class action, and

(2) appropriate allegations thought to justify the claim, including, but not necessarily limited to:

(A) the size (or approximate size) and definition of the alleged class;

(B) the basis on which the party or parties claim to be an adequate representative of the class;

(C) the alleged questions of law and fact claimed to be common to the class; and

(D) in actions claimed to be maintainable as class actions under Federal Rule of Civil Procedure 23(b)(3), allegations thought to support the findings required by that subsection.

(c) Within sixty days after issue having been joined in any class action, counsel for the parties shall meet with a District Judge or Magistrate Judge and a scheduling order shall issue providing for orderly discovery; such order may initially limit discovery only as to facts relevant to the certification of the alleged class.

(d) Within 120 days after the filing of a pleading alleging a class action, unless this period is extended on motion for good cause filed prior to the expiration of said 120-day period or in the scheduling order, the party seeking class certification shall move for a determination under Federal Rule of Civil Procedure 23(c)(1) as to whether the case is to be maintained as a class action. The motion shall include, but is not limited to, the following:

(1) a brief statement of the case;

(2) a statement defining the class sought to be certified, including its geographical and temporal scope;

(3) a description of the party's particular grievance and why that claim qualifies the party as a member of the class as defined;

(4) a statement describing any other pending actions in any court against the same party alleging the same or similar causes of actions, about which the party or counsel seeking class action certification is personally aware;

(5) in cases in which a notice to the class is required by Federal Rule of Civil Procedure 23(c)(2), a statement of what the proposed notice to the members of the class should include and how and when the notice will be given, including a statement regarding security deposit for the cost of notices; and

(6) a statement of any other matters that the movant deems necessary and proper to the expedition of a decision on the motion and the speedy resolution of the case on the merits.

The other parties shall respond to said motion in accordance with the provisions of these rules.

(e) In ruling upon a motion for class certification, the Court may allow the action to be so maintained, may disallow and strike the class action averments, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary under the circumstances. Whenever possible, where the determination is ordered to be postponed, a date shall be fixed for renewal of the motion before the same Judge.

(f) The burden shall be upon any party seeking to maintain a case as a class action to show that the action is properly maintainable as such. If the Court determines that an action may be maintained as a class action, the party obtaining that determination shall, unless otherwise ordered by the Court, initially bear the expenses of and be responsible for giving such notice as the Court may order to members of the class.

(g) Failure to move for class determination and certification within the time required herein shall constitute and signify an intentional abandonment and waiver of all class action allegations contained in the pleading and the action shall proceed as an individual, non-class action thereafter. If any motion for class determination or certification is filed after the deadline provided herein, it shall not have the effect of reinstating the class allegations unless and until it is acted upon favorably by the Court upon a finding of excusable neglect and good cause.

(h) The attorneys for the parties are governed by the New York State Lawyer's Code of Professional Responsibility as adopted from time to time by the Appellate Divisions of the State of New York concerning contact with and solicitation of potential class members.

(i) No class action allegation shall be withdrawn, deleted, or otherwise amended without Court approval. Furthermore, no class action shall be compromised without court approval and notice of the proposed compromise shall be given to all members of the class in such manner as the Court directs.

(j) Six months from the date of issue having been joined and every six months thereafter until the action is terminated, counsel in all class actions shall file with the Clerk a joint case status report indicating whether any motions are pending, what discovery has been completed, what discovery remains to be conducted, the extent of any settlement negotiations that have taken place and the likelihood of settlement, and whether the matter is ready for trial.

(k) The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross-claim alleged to be brought for or against a class.

RULE 24

NOTICE OF CLAIM OF UNCONSTITUTIONALITY

If at any time prior to the trial of any action, suit, or proceeding, to which neither the United States, an individual state, nor any agency, officer or employee of either is a party, a party draws in question the constitutionality of an Act of Congress or a state statute affecting the public interest, such party shall forthwith and in writing notify the Court of the existence of such question and specifically identify the statute and the respects in which it is claimed to be unconstitutional. This will enable the Court to comply with the requirements of 28 U.S.C. § 2403.

RULE 26

GENERAL RULES GOVERNING DISCOVERY

(a) **Actions, Petitions and Proceedings Exempted From Mandatory Initial Disclosure and Discovery Conference Requirements.** The following actions, petitions and proceedings are exempted from the mandatory initial disclosure and discovery conference requirements of Federal Rule of Civil Procedure 26(a) and (f):

- (1) for review on an administrative record;
- (2) to enforce or quash an administrative summons or subpoena;
- (3) by the United States to recover benefit payments or collect on a student loan;
- (4) ancillary to proceedings in other courts;
- (5) to enforce an arbitration award;
- (6) brought by a *pro se* prisoner involving civil rights;
- (7) involving Social Security; and
- (8) involving *habeas corpus*.

(b) **Rule 26(f) Discovery Conference.** In addition to the matters required to be addressed at the discovery conference among counsel contemplated by Federal Rule of Civil Procedure 26(f), the following topics shall also be discussed:

- (1) possibility of settlement;
- (2) factual and legal bases for all claims and defenses, and the identity of issues in dispute or those that can be agreed upon;

(3) specific relief requested;

(4) intended discovery and proposed methods to limit and/or decrease time and expense thereof, including the willingness of the parties as a courtesy to exchange discovery demands electronically in addition to the service of paper copy;

(5) willingness to consent to the referral of any or all matters to a Magistrate Judge pursuant to 28 U.S.C. §636 and Local Rule of Civil Procedure 72.2;

(6) suitability of case for alternative dispute resolution, and identity of the process thereof;

(7) the need for adopting special procedures for managing difficult actions involving complex issues, multiple parties or difficult legal questions; and

(8) the appropriateness of an advanced trial date and limited discovery in an uncomplicated action.

(c) **Timing and Sequence of Discovery.** Subject to the requirements of Federal Rule of Civil Procedure 26(a)(1), a party may not seek discovery, absent agreement of the parties or court order, from any source before the parties have met and conferred as required by Federal Rule of Civil Procedure 26(f).

(d) **Form of Interrogatories, Requests to Produce or Inspect and Requests for Admission.** The parties shall number each interrogatory or request sequentially, regardless of the number of sets of interrogatories or requests. In addition to service pursuant to Federal Rule of Civil Procedure 5, the party to whom interrogatories or discovery requests are directed shall, whenever practicable, be supplied with an electronic courtesy copy, whether by computer disk or electronic mail, containing each interrogatory and/or request in sequential format. In answering or objecting to interrogatories, requests for admission, or requests to produce or inspect, the responding party shall first state verbatim the propounded interrogatory or request and immediately thereafter the answer or objection.

(e) **Uniform Definitions for all Discovery Requests.**

(1) The full text of the definitions and rules of construction set forth in paragraphs (3) and (4) is deemed incorporated by reference into all discovery requests. No discovery request shall use broader definitions or rules of construction than those set forth in paragraphs (3) and (4). This rule shall not preclude (a) the definition of other terms specific to the particular litigation, (b) the use of abbreviations, or (c) a more narrow definition of a term defined in paragraph (3).

(2) This rule is not intended to broaden or narrow the scope of discovery permitted by the Federal Rules of Civil Procedure.

(3) The following definitions apply to all discovery requests:

Communication. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

Document. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

Identify (with respect to persons). When referring to a person, “to identify” means to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

Identify (with respect to documents). When referring to documents, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipients(s).

Parties. The terms “plaintiff” and “defendant,” as well as a party’s full or abbreviated name or a pronoun referring to a party, mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

Person. The term “person” is defined as any natural person or any business, legal or governmental entity or association.

Concerning. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

(4) The following rules of construction apply to all discovery requests:

All/Each. The terms “all” and “each” shall be construed as all and each.

And/Or. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

Number. The use of the singular form of any word includes the plural and vice versa.

(f) **Assertion of Claim of Privilege.**

(1) Where a claim of privilege is asserted in objecting to any means of discovery or disclosure, including but not limited to a deposition, and an answer is not provided on the basis of such assertion,

(A) The attorney asserting the privilege shall identify the nature of the privilege (including work product) which is being claimed and, if the privilege is governed by state law, indicate the state’s privilege rule being invoked; and

(B) The following information shall be provided in the objection, unless to divulge such information would cause disclosure of the allegedly privileged information:

(i) For documents: (I) the type of document, *e.g.*, letter or memorandum; (II) the general subject matter of the document; (III) the date of the document; and (IV) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate, the author of the document, the addressees of the document, and any other recipients shown in the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other;

(ii) For oral communications: (I) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (II) the date and place of communication; and (III) the general subject matter of the communication.

(2) Where a claim of privilege is asserted during a deposition, and information is not provided on the basis of such assertion, the information set forth in paragraph (1) above shall be furnished (a) at the deposition, to the extent it is readily available from the witness being deposed or otherwise, and (b) to the extent the information is not readily available at the deposition, in writing within ten business days after the deposition session at which the privilege is asserted, unless otherwise ordered by the Court.

(3) Where a claim of privilege is asserted in response to discovery or disclosure other than at a deposition, and information is not provided on the basis of such assertion, the information set forth in paragraph (1) above shall be furnished in writing at the time of the response to such discovery or disclosure, unless otherwise ordered by the Court.

(g) **Non-filing of Discovery Materials.** See Local Rules of Civil Procedure 7.1(a)(1), and 56.1(d).

(h) **Cooperation Among Counsel in the Discovery Context.** See the Civility Principles of the United States District Court for the Western District of New York.

RULE 29

STIPULATIONS

All stipulations affecting a case before the Court, except stipulations which are made in open court and recorded by the court reporter, shall be in writing and signed, and shall be filed. Except

to prevent injustice, any stipulation which fails to satisfy these requirements shall not be given effect.

RULE 30

DEPOSITIONS

(a) **Fair Notice.** Absent agreement of the parties or court order, each notice to take the deposition of a party or other witness shall be served at least twenty days prior to the date set for examination.

(b) **Production of Documents in Connection with Depositions.** Consistent with the requirements of Federal Rules of Civil Procedure 30 and 34, a party seeking production of documents of another party or witness in connection with a deposition shall schedule the deposition to allow for the production of the documents at least seven calendar days in advance of the deposition. Upon receipt of the documents, the party noticing the deposition shall immediately inform counsel for all other noticed parties that the requested documents have been produced and shall make the produced documents available for inspection and reproduction by counsel for all other noticed parties. If documents which have been so requested are not produced at least seven days prior to the deposition, the party noticing the deposition may either adjourn the deposition until a minimum of seven days after such documents are produced or, without waiving the right to have access to the documents, proceed with the deposition on the originally scheduled date.

(c) **Procedures for videotaped depositions.** A deposition by other than stenographic means (i.e. without the use of a stenographic record) may be taken only upon order of the Court. A deposition to be recorded on video tape and by stenographic means requires no prior order (except as required by subparagraph (8) of this rule). The following procedures shall be followed:

(1) The deposition notice shall state that the deposition will be recorded both stenographically and on video tape. At the deposition, the operator of the camera shall be identified; however, nothing shall preclude utilization of an employee of the attorney who noticed the deposition from acting as the camera operator.

(2) The camera shall be directed at the witness at all times showing a head and shoulders view, except that close-up views of exhibits are permitted where requested by the questioning attorney.

(3) Prior to trial, counsel for the party seeking to use the deposition at trial shall approach opposing counsel and attempt to resolve voluntarily all objections made at the deposition.

(4) Unresolved objections shall be submitted to the Court by way of a motion *in limine* made by the party seeking to use the deposition at trial. The motion may be made at any time after the deposition, but shall be made no later than one week before trial or in compliance with any date established by applicable order of the

Court. The objected-to portion(s) of the transcript shall be annexed to such motion papers.

(5) In accordance with the Court's ruling on objections, the party seeking to use the deposition shall notify opposing counsel of the pages and line numbers of the deposition transcript which the party plans to delete from the video tape. The party seeking to use the video tape deposition at trial shall then edit the tape accordingly, and shall bear the expenses of editing. If the Court overrules an objection made during the deposition, such objection need not be deleted. If requested, an instruction from the Court at the time the deposition is shown regarding objections heard on the tape will be given.

(6) At least three days before showing the tape, the party seeking to use the tape at trial shall deliver a copy of the edited tape to opposing counsel. Opposing counsel may only object at that time if the edited version does not comply with the Court's ruling and the agreement of counsel set forth above, or if the quality of the tape is such that it will be difficult for the jury to understand. Such objections, if any, must be made in writing and served at least 24 hours before the tape is to be shown.

(7) The party seeking to use the video tape deposition must provide the equipment necessary to do so in court.

(8) See Local Rule of Civil Procedure 54 with respect to videotaping costs being allowed as a component of taxable costs.

RULE 34

LIMITATION ON REQUESTS TO PRODUCE DOCUMENTS OR THINGS

Any party may serve upon any other party requests for the production of documents or things not exceeding 25 in number, including all discrete subparts. Service of requests for production of more than 25 documents or things is permitted only upon the parties' written stipulation or upon leave of the Court. Leave to serve additional requests shall be granted to the extent consistent with the principles of Federal Rule of Civil Procedure 26(b)(2).

RULE 37

MANDATORY PROCEDURE FOR ALL DISCOVERY MOTIONS

To promote the efficient administration of justice and unless ordered otherwise, no motion for discovery and/or production of documents under Federal Rules of Civil Procedure 26-37 shall be heard unless moving counsel notifies the Court by written affidavit that sincere attempts to resolve the discovery dispute have been made. Such affidavit shall detail the times and places of the parties' meetings, correspondence or discussions concerning the discovery dispute, and the names of all parties participating therein.

RULE 38

REQUESTS FOR JURY TRIALS IN CASES REMOVED FROM STATE COURT

In any action removed to this Court from the courts of the State of New York, a party entitled to a trial by jury under Federal Rule of Civil Procedure 38 shall be afforded a jury trial if a demand is filed and served as provided by Federal Rule of Civil Procedure 81(c).

RULE 41.1

SETTLEMENTS AND APPROVAL OF SETTLEMENTS ON BEHALF OF INFANTS, INCOMPETENTS AND DECEDENTS' ESTATES

(a) **Settlement.** When a case is settled, the parties shall, within ten days, file in the office of the Clerk a signed agreement for judgment or stipulation for dismissal as appropriate, unless the Judge extends the time. If no such agreement is filed, the Judge may enter an order dismissing the case as settled, without costs, and on the merits.

(b) **Settlements of Actions on Behalf of Infants or Incompetents.**

(1) An action by or on behalf of an infant or an incompetent shall not be settled or compromised, voluntarily discontinued, dismissed or terminated without leave of Court. The proceeding upon an application to settle or compromise such an action shall conform, as nearly as possible to Sections 1207 and 1208 of New York's Civil Practice Law and Rules, but the Judge, for cause shown, may dispense with any New York State requirement.

(2) The Judge shall determine whether such application requires a hearing and whether the presence of the infant or incompetent together with his or her legal representative is required at such hearing.

(3) The Judge shall authorize payment of a reasonable attorney's fee and proper disbursements from the amount recovered in such an action, whether realized by settlement, execution or otherwise, and shall determine such fee and disbursements, after due inquiry as to all charges against the fund.

(4) The Judge shall order the balance of the proceeds of the settlement or recovery to be distributed pursuant to Section 1206 of New York's Civil Practice Law and Rules, or upon good cause shown, pursuant to such plan as the Judge deems necessary to protect the interests of the infant or incompetent.

(c) Settlements of Actions Brought on Behalf of Decedents' Estates.

(1) Actions brought on behalf of decedents' estates shall not be settled or compromised, or voluntarily discontinued, dismissed or terminated, without leave of court. The application to settle or compromise shall include a signed affidavit or petition by the estate representative and a signed affidavit of the representative's attorney addressing the following:

(A) the circumstances giving rise to the claim;

(B) the nature and extent of the damages;

(C) the terms of the proposed settlement, including the attorneys' fees and disbursements to be paid out of the settlement;

(D) the circumstances of any other claims or settlements arising out of the same occurrence; and

(E) the reasons why the proposed settlement is believed to be in the best interests of the estate and distributees.

(2) Counsel shall submit a proposed order approving the settlement.

(3) The Judge shall determine whether a hearing to determine the application is necessary.

(4) After approval of the settlement, attorneys' fees and disbursements, the Judge shall direct the estate representative to make application to the appropriate Surrogate

of the State of New York or analogous jurist of another state for an order of distribution of the net proceeds of the settlement pursuant to either Section 5-4.4 of New York's Estate Powers and Trusts Law or the analogous provision of the law of the appropriate state.

RULE 41.2

DISMISSAL FOR FAILURE TO PROSECUTE

(a) If a civil case has been pending for more than six months and is not in compliance with the directions of the Judge or a Magistrate Judge, or if no action has been taken by the parties in six months, the Clerk, upon the direction of the assigned Judge, shall issue a written order to the parties to show cause within thirty days why the case should not be dismissed for failure to prosecute. The parties shall respond to the order by sworn affidavits filed with the Clerk explaining in detail why the action should not be dismissed. They need not appear in person. No explanations communicated in person, over the telephone, or by letter shall be acceptable.

(b) If the parties fail to respond as required in section (a), the Judge may issue a written order dismissing the case for failure to prosecute or providing for sanctions or making other directives to the parties as justice requires.

RULE 47.1

JURY TRIALS - CIVIL ACTIONS

(a) The jury in a civil case shall consist of no fewer than six and not more than twelve members. All verdicts shall be by unanimous vote of the jurors unless all parties stipulate otherwise.

(b) Challenges shall be permitted as provided in 28 U.S.C. § 1870 and Federal Rule of Civil Procedure 47(b). The Court may for good cause excuse a juror from service during trial or deliberation, but no verdict shall be taken from a jury reduced in size to fewer than six members unless so stipulated by the parties.

(c) Unless otherwise ordered, interrogation of prospective jurors on *voir dire* examination shall be conducted by the Court. Counsel may submit proposed questions in writing to the Judge or Magistrate Judge prior to or during the *voir dire* examination. The Judge or Magistrate Judge in his or her discretion also may permit questions to be submitted orally.

(d) In a civil case in which a jury trial has been properly demanded, the jury may be selected by either the panel method or the struck method as determined by the Court.

(e) The method for selecting the jury pursuant to the panel method shall be as follows:

(1) The deputy will at random call names from the available panel and direct those persons to be seated in the jury box in the order in which they are called. The total number to be seated shall be determined by the Court.

(2) The Court will conduct *voir dire* in accordance with Local Rule of Civil Procedure 47.1(c). If counsel are permitted *voir dire*, counsel may question the jury at this time.

(3) The Court will excuse any prospective jurors for cause where appropriate, acting either *sua sponte* or upon application of a party, and replace them with new prospective jurors.

(4) When the Court has determined that none of the prospective jurors in the jury box should be dismissed for cause, the parties may exercise their peremptory challenges.

(5) Each side in a civil case may exercise or waive three peremptory challenges, pursuant to 28 U.S.C. § 1870. These challenges shall be exercised in three rounds, one challenge for each side in each round. If a challenge is not exercised by either party for that round, it is waived. After each round of challenges is exercised, the Clerk shall call names from the panel to replace the challenged jurors. After new jurors are seated, the procedure in Local Rule of Civil Procedure 47.1(e)(2)-(5) shall be repeated. At any time before the panel is sworn, a party may exercise a challenge as to any juror seated in the box.

(6) After all parties have exercised all of their challenges, the jury shall be sworn.

(f) The method for selecting a jury pursuant to the struck system shall be as follows:

(1) The deputy will call at random from the panel a number of prospective jurors equal to the total number of all jurors and all peremptory challenges for all parties in the action. Those persons will be seated in the jury box in the order they are called.

(2) The Court will conduct *voir dire* in accordance with Local Rule of Civil Procedure 47.1(c). If counsel are permitted *voir dire*, counsel may question the jury at this time.

(3) The Court will excuse any prospective jurors for cause where appropriate, acting either *sua sponte* or upon application of a party, and replace them with new prospective jurors.

(4) When the Court has determined that none of the prospective jurors in the jury box should be dismissed for cause, the parties may exercise their peremptory challenges.

(5) Each side in a civil case may exercise or waive three peremptory challenges pursuant to 18 U.S.C. § 1870. These challenges shall be exercised in rounds, one challenge for each side in each round. No further jurors will be called to replace those jurors excused by peremptory challenges. At the conclusion of the parties'

rounds, the Court shall announce those jurors who shall constitute the jury, and they shall be sworn.

(g) In a case with multiple defendants, the attorneys for defendants shall confer and jointly exercise their peremptory challenges. No additional peremptory challenges shall be provided solely because the case involves more than one defendant.

RULE 47.2

JURORS

Selection of petit jurors is made by random selection pursuant to the most recently-adopted Jury Selection Plan for the Western District of New York as approved by the Second Circuit Judicial Council. A copy of the Plan is available in the Clerk's office or on the Court's website at www.nywd.uscourts.gov.

RULE 54

COSTS

(a) Within thirty days after entry of final judgment, a party entitled to recover costs shall submit to the Clerk, upon forms provided by the Clerk, a verified bill of costs. Upon motion filed within five days after the costs are taxed, the Clerk's action may be reviewed by the Court.

(b) Subject to the provisions of Federal Rule of Civil Procedure 54(d)(1), the expense of any party in obtaining all or any part of a transcript for the use of the Court when ordered by it, the expense of any party in necessarily obtaining all or any part of a transcript for the purposes of a new trial, or for amended findings, or for appeals, shall be a taxable cost against the unsuccessful party at the rates prescribed by the Judicial Conference of the United States.

(c) If a party proceeds in accordance with Local Rule of Civil Procedure 30 to record a deposition by stenographic means and video tape, any additional costs incurred in recording the deposition on video tape will not be taxed by the Clerk without a prior order from the Court allowing, or upon the agreement of the parties for taxation of, such costs.

(d) Unless otherwise ordered by the District Court, or Circuit Court of Appeals pursuant to Federal Rule of Appellate Procedure 8, the filing of an appeal shall not stay the taxation of costs, entry of judgment thereon, or enforcement of such judgment.

RULE 55

DEFAULT JUDGMENT

(a) **By the Clerk.** A party entitled to entry of default by the Clerk, pursuant to Federal Rule of Civil Procedure 55(b)(1), shall submit with the form of judgment a statement showing the principal amount due, which shall not exceed the amount demanded in the complaint, giving credit for any payments and showing the amounts and dates thereof, a computation of the interest to the day of judgment, and the costs and taxable disbursements claimed. The proposed judgment shall contain the last known address of each of the judgment creditors and judgment debtors. If there is no known address for any judgment creditor or judgment debtor, an affidavit executed by either the party at whose instance a judgment is docketed or the party's attorney shall be filed stating that the affiant has no knowledge of an address. An affidavit of the party or his or her attorney shall be appended to the statement showing:

- (1) that the party against whom judgment is sought is not an infant or an incompetent person;
- (2) that the party has defaulted in appearance in the action;
- (3) that the amount shown by the statement is justly due and owing and that no part thereof has been paid except as therein set forth; and
- (4) that the disbursements sought to be taxed have been made in the action or will necessarily be made or incurred therein.

The Clerk shall thereupon enter judgment for principal, interest and costs.

(b) **By the Court.** An application to the Court for the entry of a default judgment, pursuant to Federal Rule of Civil Procedure 55(b)(2), shall be accompanied by a Clerk's certificate noting the entry of the default and by a copy of the pleading to which no response has been made.

RULE 56.1

STATEMENTS OF FACTS ON MOTION FOR SUMMARY JUDGMENT

(a) Upon any motion for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, there shall be annexed to the notice of motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement may constitute grounds for denial of the motion.

(b) The papers opposing a motion for summary judgment shall include a separate, short, and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

(c) All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party.

(d) Each statement of material fact by a movant or opponent must be followed by citation to evidence which would be admissible, as required by Federal Rule of Civil Procedure 56(e). All such citations shall identify with specificity the relevant page, and paragraph or line number of the authority cited. All cited authority, such as affidavits, relevant deposition testimony, responses to discovery requests, or other documents containing such evidence, shall be separately filed and served as an appendix to the statement prescribed by subsections (a) or (b), *supra*, in conformity with Federal Rule of Civil Procedure 56(e), and denominated "Plaintiff's/Defendant's Appendix to Local Rule 56.1 Statement of Material Facts." Any cited authority that has otherwise been served and filed in conjunction with the motion need not be included in the aforementioned appendix.

(e) Notwithstanding the provisions of Local Rule 7.1(c), the opposing party shall have thirty days after service of the motion, unless otherwise ordered by the Court, to serve and file responding papers; the moving party shall have fifteen days after service of the responding papers, unless otherwise ordered by the Court, to serve and file reply papers. Absent permission by the Court, sur-reply papers are not permitted.

In the event that the party opposing the original motion files a cross-motion, the original moving party shall have thirty days after service of the cross-motion, unless otherwise ordered by the Court, to serve and file responding papers in opposition to the cross-motion; the party that filed the cross-motion shall have fifteen days after service of the responding papers, unless otherwise ordered by the Court, to serve and file reply papers in support of the cross-motion.

RULE 56.2

NOTICE TO *PRO SE* LITIGANTS OPPOSING SUMMARY JUDGMENT

Any party moving for summary judgment against a party proceeding *pro se* shall serve and file as a separate document, together with the papers in support of the motion, a "Notice to *Pro Se* Litigant Opposing Motion For Summary Judgment" in the form indicated below. Where the *pro se* party is not the plaintiff, the movant shall amend the form notice as necessary to reflect that fact.

Notice to *Pro Se* Litigant Opposing Motion For Summary Judgment

Plaintiff is hereby advised that the defendant has asked the Court to decide this case without a trial, based on written materials, including affidavits, submitted in support of the motion. THE CLAIMS PLAINTIFF ASSERTS IN HIS/HER COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF HE/SHE DOES NOT RESPOND TO THIS MOTION by filing his/her own sworn affidavits or other papers as required by Rule 56(e). An affidavit is a sworn statement of fact based on personal knowledge that would be admissible in evidence at trial.

In short, Rule 56 provides that plaintiff may NOT oppose summary judgment simply by relying upon the allegations in the complaint. Rather, plaintiff must submit evidence, such as witness statements or documents, countering the facts asserted by the defendant and raising issues of fact for trial. Any witness statements, which may include plaintiff's own statements, must be in the form of affidavits. Plaintiff may file and serve affidavits that were prepared specifically in response to defendant's motion for summary judgment.

Any issue of fact that plaintiff wishes to raise in opposition to the motion for summary judgment must be supported by affidavits or by other documentary evidence contradicting the facts asserted by defendant. If plaintiff does not respond to the motion for summary judgment on time with affidavits or documentary evidence contradicting the facts asserted by defendant, the Court may accept defendant's factual assertions as true. Judgment may then be entered in defendant's favor without a trial.

Pursuant to Rules 7.1(e) and 56.1 of the Local Rules of Civil Procedure for the Western District of New York, plaintiff is required to file and serve the following papers in opposition to this motion: (1) a memorandum of law containing relevant factual and legal argument; (2) one or more affidavits in opposition to the motion; and (3) a separate, short, and concise statement of the material facts as to which plaintiff contends there exists a genuine issue to be tried, followed by citation to admissible evidence. In the absence of such a statement by plaintiff, all material facts set forth in defendant's statement of material facts not in dispute will be deemed admitted. A copy of the Local Rules to which reference has been made may be obtained from the Clerk's Office of the Court.

If plaintiff has any questions, he/she may direct them to the *Pro Se* Office.

Plaintiff must file and serve any supplemental affidavits or materials in opposition to defendant's motion no later than the date they are due as provided in Rule 56.1(e) of the Local Rules of Civil Procedure for the Western District of New York.

RULE 58

SATISFACTION OF JUDGMENTS

Satisfaction of a money judgment recovered or registered in this District shall be entered by the Clerk as follows:

(a) Upon the payment of the judgment into the registry of the Court, but such payment may only be made pursuant to a prior order of the Court authorizing such payment;

(b) Upon the filing of a satisfaction executed and acknowledged by:

(1) the judgment creditor; or

(2) his or her legal representatives or assigns, with evidence of their authority; or

(3) his or her attorney, if within five years of the entry of the judgment or decree.

(c) If the judgment creditor is the United States, upon the filing of a satisfaction executed by the United States Attorney; or

(d) Upon the registration of a certified copy of a satisfaction entered in another District.

RULE 65

TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS

(a) **Temporary Restraining Orders (TRO).** An Order to Show Cause is not generally available under the Federal Rules of Civil Procedure. Such relief is available upon motion for a TRO, pursuant to Federal Rule of Civil Procedure 65, and a motion for an expedited hearing, pursuant to Local Rule of Civil Procedure 7.1(d) and Federal Rule of Civil Procedure 6(d). There are two types of TROs: an *ex parte* TRO and a TRO issued upon notice to the adverse party. An *ex parte* TRO is available only in extraordinary circumstances. In most cases, the Court will require both notice to the adverse party and an opportunity to be heard before granting a TRO.

(1) **Ex Parte TRO.** A party seeking an *ex parte* TRO must demonstrate that the requirements of Fed. R. Civ. P. 65(b)(1) and (2) are met. An application for an *ex parte* TRO shall include:

(A) a copy of the complaint, if the case has been recently filed;

(B) the motion for a TRO;

(C) a memorandum of law in support of the TRO citing legal authority showing that the party is entitled to the relief requested; and

(D) a proposed order granting the TRO.

Immediately after filing the TRO application with the Clerk's office, counsel for the moving party shall personally deliver courtesy copies of the foregoing documents to chambers and await further instructions from the Court. In the event that the moving party is represented by out-of-town counsel who is unable to personally deliver courtesy copies, counsel shall mail such courtesy copies directly to chambers and shall contact chambers by telephone to request a waiver of this requirement. Because an application for a TRO will rarely be granted *ex parte*, a party moving under this subsection should consider appearing prepared to proceed pursuant to

subsection (2) below, in the event that the Court finds that an *ex parte* proceeding is unwarranted.

(2) **TRO on Notice.** An application for a TRO on notice shall include:

- (A) a copy of the complaint, if the case has been recently filed;
- (B) the motion for a TRO;
- (C) a memorandum of law in support of the TRO citing legal authority showing that the party is entitled to the relief requested;
- (D) a proposed order granting the TRO; and
- (E) a motion for an expedited hearing pursuant to Local Rule of Civil Procedure 7.1(d) and Federal Rule of Civil Procedure 6(d).

Immediately after filing the TRO application with the Clerk's office, counsel for the moving party shall personally deliver courtesy copies of the foregoing documents to chambers and await further instructions from the Court. In the event that the moving party is represented by out of town counsel who is unable to personally deliver courtesy copies, counsel shall mail such courtesy copies directly to chambers and shall contact chambers by telephone to request a waiver of this requirement.

(b) **Preliminary Injunction.** A preliminary injunction will only issue after notice and hearing, unless there is a waiver. An application for a preliminary injunction shall include:

- (1) a copy of the complaint, if the case has been recently filed;
- (2) the motion for a preliminary injunction;
- (3) a memorandum of law in support of the motion citing legal authority showing that the moving party is entitled to the relief requested;
- (4) a list of witnesses and exhibits to be presented at the preliminary injunction hearing, and a brief summary of the anticipated testimony of such witnesses; and
- (5) a proposed order granting the injunctive relief.

Additionally, if the moving party seeks to have the motion heard on an expedited basis, such party shall include a motion for an expedited hearing pursuant to Local Rule of Civil Procedure 7.1(d) and Federal Rule of Civil Procedure 6(d).

(c) **Security.** The parties shall be prepared to address the security requirements of Federal Rule of Civil Procedure 65(c) whenever applying for injunctive relief.

RULE 67

DEPOSITS OF MONEY INTO COURT

(a) **General Orders Regarding Funds**. The Court's directions to the Clerk regarding (1) the investment of monies placed in the custody of the Court or of the Clerk and (2) the assessment of court fees against such monies are contained in various General Orders of the Court and amendments thereto, available in the Clerk's offices.

(b) **Monies Deposited Without a Special Order**. Whenever money is permitted by statute or rule to be deposited into Court without leave of Court (e.g. in condemnation proceedings governed by Federal Rule of Civil Procedure 71A(j)) or is directed by the Court to be deposited as a condition to some form of relief (e.g. cash bail, cash bonds), General Orders shall govern the investment of such funds upon their receipt by the Clerk.

(c) **Monies Deposited With a Special Order**. Whenever statute or rule requires that leave of court be obtained for the deposit of money into the Court (e.g. Federal Rule of Civil Procedure 67), an order shall be promptly filed with the Clerk. If, and to the extent that, any such order fails to instruct the Clerk as to the handling of such funds, they shall be handled in accordance with the aforesaid General Orders.

(d) **Court Fees**. Such fees are promulgated and required by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1914(b).

(e) **Alternatives**. Parties and others are encouraged to consider alternatives which do not involve the receipt of monies by the Clerk, such as escrow accounts, joint signature accounts in the names of counsel, and letters of credit. Such alternatives avoid the imposition of court fees and may provide greater flexibility to maximize yield for the benefit of the parties.

RULE 72.1

AUTHORITY OF MAGISTRATE JUDGES

(a) A full-time United States Magistrate Judge is authorized to exercise all powers and perform all duties conferred upon Magistrate Judges by 28 U.S.C. § 636(a), (b) and (c).

(b) Notwithstanding any other rule of this Court, a United States Magistrate Judge may be assigned such additional duties as are not inconsistent with the Constitution or laws of the United States.

RULE 72.2

ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

(a) Upon filing, all civil cases shall be assigned by the Clerk to a District Judge and a Magistrate Judge. The District Judge to whom the case is assigned may designate the Magistrate Judge to conduct pre-trial procedures pursuant to Local Rule of Civil Procedure 16.1.

- (b) (1) **Notice.** Upon the filing of a complaint, the Clerk shall provide to plaintiff or his or her representative, a notice, as approved by the Court, informing the parties of the availability of a Magistrate Judge to conduct any or all proceedings in the case and order the entry of a final judgment. Additional copies of the notice may be furnished to the parties at later stages of the proceedings and may be included with pre-trial notices and instructions. The decision of the parties shall be communicated to the Clerk of the Court. Thereafter, either the District Judge or the Magistrate Judge may again advise the parties of the availability of the Magistrate Judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. This rule, however, shall not preclude a District Judge or Magistrate Judge from both informing the parties that they have the option of referring a case to a Magistrate Judge in accord with this rule and reminding the parties of such option, as appropriate throughout the progress of the case. The consent may be executed at any time prior to trial, subject to the approval of the District Judge to whom the case has been assigned.

(2) **Execution of Consent.**

(A) For cases in which the parties are represented by counsel, the Clerk shall not accept a consent form unless it has been signed by all of the parties or their attorneys in the case. The plaintiff shall be responsible for submitting such consent form, executed by all parties, to the Clerk of the Court.

(B) For cases in which one or more of the parties is proceeding *pro se*, the Clerk shall send a consent form to each of the parties. All parties are required to complete and return the form pursuant to the instructions thereon.

(3) **Reference.** After the consent form has been executed and submitted, the Clerk shall transmit it to the District Judge to whom the case has been assigned for approval and referral of the case to a Magistrate Judge. Once the case has been assigned to a Magistrate Judge, the Magistrate Judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk to enter a final judgment in the same manner as if a District Judge had presided.

(4) **Additional Parties.** Any parties added to an action after reference to a Magistrate Judge shall be notified by the Clerk of their rights to consent to the exercise of jurisdiction by the Magistrate Judge and of their appellate rights pursuant to 28 U.S.C. § 636(c)(3), (4) and (5). In the event an added party does not consent to the Magistrate Judge's jurisdiction, the action shall be returned to the District Judge for further proceedings.

RULE 72.3

REVIEW AND APPEAL OF MAGISTRATE JUDGES' ACTIONS

(a) **Review.**

(1) Review of a Magistrate Judge's orders or of his or her proposed findings of fact and recommendations for disposition shall be governed by 28 U.S.C. § 636(b)(1). If the parties consent to trial before the Magistrate Judge, there shall be no review or appeal of interlocutory orders to the District Court.

(2) All orders of the Magistrate Judge issued pursuant to these rules, as authorized by 28 U.S.C. § 636(b)(1)(A), shall be final unless within ten days after being served with a copy of the Magistrate Judge's order, a party files with the Clerk and serves upon opposing counsel a written statement specifying the party's objections to the Magistrate Judge's order. The specific matters to which the party objects and the manner in which it is claimed that the order is clearly erroneous or contrary to law shall be clearly set out.

(3) A party may object to proposed findings of fact and recommendations for disposition submitted by a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), by filing with the Clerk and serving upon opposing counsel written objections to the proposed findings and recommendations within ten days after being served with a copy of such findings and recommendations, as provided in 28 U.S.C. § 636(b)(1)(C). The time for filing objections to the proposed findings and recommendations may be extended by direction of the District Judge. The written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority.

(b) **Appeal from Judgments in Civil Cases (28 U.S.C. § 636(c)(1)).** Upon entry of a judgment in any civil case on consent of the parties under authority of 28 U.S.C. § 636(c)(1) and Local Rule of Civil Procedure 72.2(b), a party shall appeal directly to the United States Court of Appeals for the Second Circuit in the same manner as an appeal from any other judgment of this Court.

(c) **Appeals from Other Orders of a Magistrate Judge.** Appeals from any other decisions and orders of a Magistrate Judge not provided for in this rule shall be taken as provided by governing statute, rule or decisional law.

RULE 76.1

APPEALS

(a) Appellant shall file a notice of appeal in accordance with Federal Rule of Appellate Procedure 3. Such notice of appeal shall include the names of the parties to the judgment and the names and addresses of their respective attorneys of record.

(b) In addition to the original notice of appeal, appellant shall file sufficient copies to serve all counsel and the Clerk of the Circuit Court of Appeals.

(c) Counsel share the responsibility of preparing the index for the record on appeal. Upon completion, the index shall be presented to the Clerk for transmittal to the United States Court of Appeals for the Second Circuit or to the United States Supreme Court.

(d) Counsel shall, wherever possible and consistent with the Federal Rules of Appellate Procedure, stipulate to the designation of less than the entire trial record.

(e) Counsel are cautioned to examine and follow both the Federal Rules of Appellate Procedure and the Rules of the United States Court of Appeals for the Second Circuit.

RULE 76.2

BANKRUPTCY APPEALS; DISMISSAL FOR FAILURE TO PERFECT

If the appellant shall fail to perfect the appeal in the manner prescribed by Federal Rule of Bankruptcy Procedure 8006, the Clerk of the Bankruptcy Court shall forward to the Clerk of the District Court the notice of appeal, a copy of the order or judgment appealed from, a copy of the docket entries and such other papers as the Clerk of the Bankruptcy Court deems relevant to the appeal. When the partial record has been filed in the District Court, the Court may, upon motion of the appellee filed with the District Court or upon its own initiative, dismiss the appeal for non-compliance with Federal Rule of Bankruptcy Procedure 8006.

RULE 77.1

SESSIONS OF COURT

Regular and continuous sessions of the Court shall be held at Buffalo and Rochester.

Special sessions of Court may be held at such places in the District and for such periods of time as may be practicable and as the nature of the Court's business may require.

RULE 77.2

ORDERS

Orders of discontinuance or dismissal, whether by consent or otherwise, shall be presented to the Court for signature, except such orders listed herein which the Clerk may sign without submission to a Judge:

- (1) Orders on consent for the substitution of attorneys in civil cases not yet scheduled for trial; and
- (2) Orders on consent satisfying decrees and orders on consent canceling stipulations and bonds.

After the Court has instructed a prevailing party to submit an order, the prevailing party shall submit to the Court a proposed order which has been approved by opposing counsel and which contains the endorsement of opposing counsel: "Approved as to form and substance."

RULE 77.3

COPIES OF LOCAL RULES

Copies of these rules, and the amendments and appendices to them, shall be available upon request in the offices of the Clerk of Court in both Rochester and Buffalo. These rules are also available on the Court's website at www.nywd.uscourts.gov.

Persons other than litigants who are permitted to proceed *in forma pauperis* in a pending case seeking to obtain a copy of these rules by mail must provide a self-addressed envelope of at least 9" x 12" in size with sufficient postage affixed.

RULE 77.4

COPIES OF ORDERS

The Clerk shall provide one copy of every order entered, together with notice thereof, to each law firm representing one or more parties to, or non-party movants in, the action.

RULE 78

MOTIONS

Unless otherwise ordered by the Court:

(a) Motions and hearings on all contested matters shall be heard on the dates and times set by each individual Judge in the Western District of New York. Information regarding such dates and times may be obtained from the Clerk's office.

(b) If the Judge assigned to hold the Court shall be absent, the Clerk of the Court shall adjourn the hearings on motions or applications to some convenient day.

(c) All motions and notice thereof shall be governed by the Federal Rules of Civil Procedure. Original motion papers shall be filed in the Clerk's office, either at the United States Courthouse, Buffalo, New York or at the United States Courthouse, Rochester, New York. Refer to Local Rule of Civil Procedure 7.1 for more information on filing motion papers.

(d) Except as provided in subdivision (e), any application for adjournment of a motion shall be made by the attorney, or by an associate, to the Judge before whom the motion is to be argued. Such application shall be made to the Judge's courtroom deputy and not to the Judge's law clerk. In requesting an adjournment, the following guidelines shall be adhered to:

(1) The party seeking the adjournment shall first confer with all other parties before approaching the courtroom deputy;

(2) A suggested rescheduled date, agreeable to all parties, shall be determined, if possible; and

(3) The party seeking the adjournment shall notify the courtroom deputy in writing, unless unforeseen circumstances prohibit written notice, of the request and the suggested new date.

(e) Requests for adjournments by *pro se* litigants must be made in writing, by letter to the Court, with copies to all other counsel in the case.

RULE 79

EXHIBITS

(a) Prior to the beginning of a trial, the exhibits shall be marked and exhibit lists prepared as the Court directs.

(b) All exhibits offered by any party in civil or criminal proceedings, whether or not received as evidence, shall be retained after each day of trial by the party or attorney offering the exhibits, unless otherwise ordered by the Court. Immediately after the case is submitted to the trier of fact,

all exhibits which were received into evidence shall be delivered to the courtroom deputy. After a verdict is rendered, responsibility for custody of all exhibits reverts back to the parties.

(c) In the event an appeal is prosecuted by any party, each party to the appeal shall promptly file with the Clerk any exhibits to be transmitted to the appellate court as part of the record on appeal. Documents of unusual bulk or weight and physical exhibits, other than documents, shall remain in the custody of the attorney producing them who shall permit their inspection by any party for the purpose of preparing the record on appeal and who shall be charged with the responsibility for their safekeeping and transportation to the Court of Appeals. Those exhibits not transmitted as part of the record on appeal shall be retained by the parties who shall make them available for use by the appellate court upon request.

(d) If any party, having received notice from the Clerk concerning the removal of exhibits, fails to do so within thirty days from the date of such notice, the Clerk may destroy or otherwise dispose of those exhibits.

RULE 81

REMOVED ACTIONS

(a) **Required Documents in Cases Removed from State Court.** A party removing a civil action from State court to this Court must provide the following to the Clerk for filing:

- (1) A completed civil cover sheet;
- (2) The requisite filing fee; and
- (3) A notice of removal with the following attachments:
 - (A) An index of all documents which clearly identifies each document and indicates the date the document was filed in State court; and
 - (B) Each document filed in the State court action, except discovery material, individually tabbed and arranged in chronological order according to the State court file date.
- (4) The party filing the notice of removal or a designee shall declare, by affidavit or certification, that he or she has provided all other parties in the action with the notice of removal and attachments being filed with this Court.

(b) **Jury Demands in Removed Actions.** In any action removed to this Court from the courts of the State of New York, a party entitled to a trial by jury under Federal Rule of Civil Procedure 38 shall be afforded a jury trial if a demand is filed and served as provided by Federal Rule of Civil Procedure 81(c).

RULE 83.1

ATTORNEY ADMISSION TO PRACTICE

(a) **Who May Apply**. A person admitted to practice before the courts of New York State, including those admitted pursuant to Rule 520.11 of the Rules of the New York Court of Appeals, may, on motion of a member of the bar of this Court, apply to be admitted to practice in this Court upon compliance with the following provisions of this rule. Qualification to appear as an attorney of record remains subject to Local Rule of Civil Procedure 83.2.

(b) **Verified Petition**. Each applicant for admission shall file with the Clerk of this Court at least thirty days prior to a hearing thereon (unless for good cause shown the Court shortens the time) a verified petition for admission stating:

- (1) the applicant's residence and office addresses;
- (2) the applicant's educational background and major areas of professional activities since initial admission to the bar;
- (3) the time, place and court where initially admitted;
- (4) whether the applicant has ever been held in contempt of court, or censured in a disciplinary proceeding, suspended or disbarred by any court or admonished by any disciplinary committee of the organized bar, or is the subject of any pending complaint before any court. If the answer is in the affirmative, the applicant shall file a separate confidential statement under seal specifying the court or disciplinary committee imposing the sanction, the date, the facts giving rise to the disciplinary action or complaint, the sanction imposed, and such other information, including any facts of a mitigating or exculpatory nature as may be pertinent, and such confidential statement, together with the petition, shall promptly be transmitted by the Clerk to the Chief Judge of the District for review;
- (5) that the applicant has read and is familiar with:
 - (A) the provisions of the Judicial Code, 28 U.S.C. §§ 1330-1452, which pertain to jurisdiction of and venue in a United States District Court;
 - (B) the Federal Rules of Civil Procedure;
 - (C) the Federal Rules of Criminal Procedure;
 - (D) the Federal Rules of Evidence;
 - (E) the Local Rules of Practice for the United States District Court for the Western District of New York;
 - (F) the Revised Plan for the Prompt Disposition of Criminal Cases for the Western District of New York;

(G) the New York State Lawyer's Code of Professional Responsibility as adopted from time to time by the Appellate Divisions of the State of New York, and as interpreted and applied by the United States Supreme Court, the United States Court of Appeals for the Second Circuit, and this court; and

(H) the Civility Principles of the United States District Court for the Western District of New York.

(6) that the applicant agrees to adhere faithfully to the New York State Lawyer's Code of Professional Responsibility as adopted from time to time by the Appellate Divisions of the State of New York.

(c) **Time for Admissions.** Applications for admission shall be entertained on the scheduled motion days in Rochester and Buffalo, or on other days deemed appropriate by the Court.

(d) **Affidavit of Sponsoring Attorney.** The verified petition shall be accompanied by an affidavit of an attorney of this Court stating when the affiant was admitted to practice in this Court, how long and under what circumstances the affiant has known the applicant, and what the affiant knows of the applicant's character.

(e) **Attorneys Admitted to Other Districts Within the State.** A member in good standing of the bar of the United States District Court for the Southern, Eastern or Northern District of New York may be admitted to practice in this Court without formal application upon filing with this Court a certificate of the United States District Court for such District stating that he or she is a member in good standing of the bar of that Court, together with a completed attorney's oath and the proper fee. The certificate of good standing must be dated no earlier than six months prior to the date of submission to this Court.

(f) **Attorneys Admitted to Districts Outside the State.** A member in good standing of any United States District Court and of the bar of the state in which such District Court is located may apply to be admitted to practice in this Court on compliance with the provisions of parts (b), (c), (d), (g) and (l) of this rule.

(g) **Oath, Pro Bono Service.** Prior to being admitted to this Court, each applicant must take the oath of admission to this Court. Every member of the bar of this Court shall be available upon the Court's request for appointment to represent or assist in the representation of indigent parties. Appointments under this rule shall be made in a manner such that no attorney shall be requested to accept more than one appointment during any twelve month period.

(h) **Change of Address, Etc.** All attorneys admitted to practice before this Court must advise the Clerk in writing of any change in name, firm affiliation, office address or telephone number within thirty days of such change. Additionally, counsel must identify those pending cases on which he or she will remain counsel of record. The standard form for notifying the Clerk is available in both Clerk's offices or on the Court's website at www.nywd.uscourts.gov.

(i) **Admission Pro Hac Vice.** An attorney duly admitted to practice in any state, territory, district or foreign country may in the discretion of the Court be admitted *pro hac vice* to participate before the Court in any matter in which he or she may for the time be employed. Applicants for admission *pro hac vice* must provide the Court with information sufficient to satisfy all subparts of

subdivision (b) of this rule. Attorneys admitted *pro hac vice* are subject to the provisions of Local Rule of Civil Procedure 83.2(a) regarding local counsel.

(j) **Government Attorneys.** United States Attorneys, Assistant United States Attorneys, special attorneys appointed under 28 U.S.C. §§ 541-543, attorneys of the Department of Justice under 28 U.S.C. § 515, attorneys serving as Federal Public Defenders or Assistant Federal Public Defenders and attorneys employed by a federal agency, shall be admitted to practice before the Court on any matter within the scope of such employment.

(k) **Admission to Practice in Bankruptcy Matters.** Practice in bankruptcy matters before either the District Judges or the Bankruptcy Judges of this District shall be limited to attorneys admitted under this rule, subsections (a)-(j). Such attorney shall certify knowledge of such sources and provisions of bankruptcy law and rule as the Bankruptcy Court shall require by local rule approved by this Court. The "local counsel" requirement of Rule 83.2 shall not apply in bankruptcy matters unless otherwise directed by a District Judge or Bankruptcy Judge in a specific matter. This subsection of this rule shall not apply to a student admitted under the Student Practice Rule of the Bankruptcy Court.

(l) **Fees for Admission.** Each applicant for admission to this Court shall pay the fee set by the Judicial Conference plus an additional fee set by the Court. Attorneys who are admitted *pro hac vice* shall pay to the Clerk a fee in the amount set by the Court unless such fee is waived by the presiding Judge or Magistrate Judge upon a showing of good cause. Applicants for admission should contact the Clerk's office for exact fee information. A portion of the fee charged to applicants for admission to practice before the Court and to attorneys admitted *pro hac vice* shall be deposited in the District Court Fund.

The Clerk shall be the trustee of the District Court Fund. Monies deposited in the District Court Fund shall be used only for the benefit of the bench and bar in the administration of justice, including, but not limited to, reimbursement of expenses incurred by counsel assigned to represent indigent clients pursuant to the provisions of this rule.

(m) **Expenses of Assigned Counsel.** *Pro bono* attorneys who are appointed pursuant to this rule and are unsuccessful in obtaining counsel fees may seek reimbursement for expenses incident to representation of indigent clients by application to the Court. Reimbursement will be permitted to the extent possible in light of available resources and pursuant to the Plan for the Administration of the District Court Fund on file with the Clerk.

(n) **Civility Principles.** Each applicant for admission must complete the oath attached to the Court's Civility Principles. The completed oath must be submitted with the admission application. This requirement applies to all attorneys seeking admission to the bar of this Court, whether by petition, certificate of good standing or *pro hac vice*.

RULE 83.2

ATTORNEYS OF RECORD - APPEARANCE AND WITHDRAWAL

(a) Except as set forth below, only members in good standing of the bar of this Court may appear as attorneys of record.

An attorney who does not maintain an office in this District may appear in an action, and, as appropriate, such attorney shall apply for admission *pro hac vice* pursuant to Local Rule of Civil Procedure 83.1. Such attorney, whether or not admitted to practice in this District, shall obtain local counsel unless such requirement is waived by the Court. An application to proceed without local counsel must be made in writing within thirty days of the attorney's initial filing and shall be granted for good cause shown and in the discretion of the Court.

(1) Except for attorneys appearing on behalf of the United States government or a department or agency thereof, or as otherwise provided in Local Rule of Civil Procedure 83.2(a), any attorney who is not a member of the bar of this Court shall, unless otherwise ordered by the Court, in each proceeding in which he or she desires to appear, have as associate counsel of record ("local counsel") a member of the bar of this Court who maintains an office within this District, with whom the Court and opposing counsel may readily communicate regarding the conduct of this case and upon whom papers may be served.

(2) In accord with Federal Rules of Civil Procedure 11 and 26(g), an attorney who is not a member of the bar of this Court may sign a pleading, motion, request for discovery, discovery response, objection thereto and other papers, provided local counsel has been appointed or the requirement thereof waived by the Court pursuant to Local Rule of Civil Procedure 83.2(a).

(3) An attorney who is not admitted to practice in this Court pursuant to Local Rule of Civil Procedure 83.1 shall not participate actively in the conduct of any trial or of any pre-trial or post-trial proceeding before this Court.

(b) An attorney appearing for a party in a civil case shall promptly file with the Clerk a written notice of appearance. No notice of appearance is required of an attorney whose name and address appear at the end of the complaint, notice of removal, pre-answer motion, or answer in a particular case.

(c) An attorney who has appeared as attorney of record for a party may withdraw by permission of the Court for good cause shown, but withdrawal shall be effective only upon order of the Court entered after service of notice of withdrawal on all counsel of record and on the attorney's client, or upon stipulation endorsed by all counsel of record and signed by the Clerk in accordance with Local Rule of Civil Procedure 77.2. An attorney is not required to disclose to other counsel the reason(s) for withdrawal.

RULE 83.3

DISCIPLINE OF ATTORNEYS

(a) In addition to any other sanctions imposed in any particular case under these local rules, any person admitted to practice in this Court may be disbarred or otherwise disciplined, for cause, after hearing. The Chief Judge of the District may appoint a Magistrate Judge or attorney(s) to investigate, advise or assist as to grievances or complaints from any source and as to applications by attorneys for relief from sanctions. Other than provided by subsections (b) and (c) of this rule, no censure, sanction, suspension or disbarment shall be applied without both notice and an opportunity to be heard and the approval of a majority of the District Judges of the Court in active and senior service, except that any Judge of this Court may for cause, revoke an admission *pro hac vice* previously granted by that Judge. Complaints or grievances, and any files based on them, shall be treated as confidential. Discipline shall be imposed only upon suitable order of the Court, which shall or shall not be made available to the public, or published or circulated, as the Court shall determine in its discretion.

(b) (1) Where the Court is informed that any attorney admitted to this Court has been convicted of a felony as defined in subsection (b)(3), the Chief Judge will issue an order suspending that attorney from practice before this Court. The order shall be sent to the last known business address of the attorney by certified mail. An application to set aside the order of suspension must be filed with the Court within thirty days from the issuance of the order. The Court, in its discretion, may consider the application on the papers submitted, schedule oral argument, or hold an evidentiary hearing. Upon good cause shown, a majority of the active and senior District Judges may set aside the suspension when it is in the interest of justice to do so.

(2) When the Court is informed that a judgment of conviction for a felony as defined in subsection (b)(3) is final, the name of the attorney convicted shall, by order of the Chief Judge, be struck from the roll of members of the bar of this Court. "Final" for purposes of this subsection means either that the time within which to appeal has lapsed or that the judgment of the conviction for a felony has been affirmed on direct appeal. The order of disbarment shall be sent to the last known business address of the attorney by certified mail. An application to set aside the order of disbarment must be filed with the Court within thirty days from the issuance of the order. The Court, in its discretion, may consider the application on the papers submitted, schedule oral argument, or hold an evidentiary hearing. Upon good cause shown, a majority of the active and senior District Judges may set aside the disbarment when it is in the interest of justice to do so.

(3) For purposes of this subsection, the term felony shall mean any criminal offense classified as a felony under federal law; any criminal offense classified as a felony under New York law; or any criminal offense committed in any other state, commonwealth, or territory of the United States and classified as a felony therein which, if committed within New York State, would constitute a felony in New York State.

(c) Any attorney admitted to this Court who has been suspended, disbarred or disciplined in any way in any district, state, commonwealth or territory, or who has resigned from the bar of any such court while an investigation into allegations of misconduct by the attorney was pending, shall be disciplined to the same extent by this Court, as provided herein.

Upon receipt of a copy of an order imposing discipline on an attorney, the Chief Judge will issue an order disciplining the attorney to the same extent as imposed in the other jurisdiction. The order shall be sent to the last known business address of the attorney by certified mail. An application to set aside the order must be filed with the Court within thirty days from its issuance. The Court, in its discretion, may consider the application on the papers submitted, schedule oral argument, or hold an evidentiary hearing. A majority of the active and senior District Judges may set aside such order when an examination of the record resulting in that discipline discloses, by a clear and convincing evidence:

(1) that the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court should not accept as final the conclusion on that subject; or

(3) that the imposition of the same discipline by this Court would result in grave injustice.

(d) Any member of the bar of this Court must notify the Clerk, within thirty days, of any discipline by or suspension or resignation from the bar of another federal court or from the bar of any state, commonwealth, or territory. Any member of the bar of this Court who is convicted of a felony as defined in subsection (b) must file with the Clerk, within thirty days, the record of such conviction.

(e) An attorney once disbarred or suspended who seeks reinstatement to practice before this Court must reapply for admission in accordance with the provisions of Local Rule of Civil Procedure 83.1.

RULE 83.4

CONTEMPTS

(a) A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Federal Rules of Civil Procedure 37(b)(1) and 37(b)(2)(D), shall be commenced by the service of a notice of motion or order to show cause.

The affidavit upon which such notice of motion or order to show cause is based shall set forth with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the moving party. Reasonable attorneys' fees necessitated by the contempt proceeding may be included as an item of

damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon the attorney; otherwise, service shall be made personally, in the manner provided in Federal Rule of Civil Procedure 4 for the service of a summons. If an order to show cause is sought, such order may upon good cause shown embody a direction to the United States Marshal to arrest the alleged contemnor and hold him or her in bail in an amount fixed by the order, conditioned upon his or her appearance at the hearing and upon his or her holding himself or herself amenable thereafter to all orders of the Court for surrender.

(b) If the alleged contemnor puts in issue the alleged misconduct or the damages thereby occasioned, he or she shall upon demand be entitled to have oral evidence taken on the issues, either before the Court or before a master appointed by the Court. When by law the alleged contemnor is entitled to a trial by jury, he or she shall make a written demand therefor on or before the return day or adjourned day of the application; otherwise, he or she will be deemed to have waived a trial by jury.

(c) In the event the alleged contemnor is found to be in contempt of court, an order shall be made and entered

(1) reciting or referring to the verdict or findings of fact upon which the adjudication is based;

(2) setting forth the amount of the damages to which the complainant is entitled;

(3) fixing the fine, if any, imposed by the Court, which fine shall include the damages found, and naming the person to whom such fine shall be payable;

(4) stating any other conditions, the performance of which will operate to purge the contempt; and

(5) directing the arrest of the contemnor by the United States Marshal, and his or her confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law.

The order shall specify the place of confinement. No party shall be required to pay or to advance to the Marshal any expenses for the upkeep of the prisoner. Upon such an order, no person shall be detained in prison by reason of the non-payment of the fine for a period exceeding six months. A certified copy of the order committing the contemnor shall be sufficient warrant to the Marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(d) In the event the alleged contemnor shall be found not guilty of the charges made against him or her, he or she shall be discharged from the proceeding and, in the discretion of the Court, may have judgment against the complainant for his or her costs and disbursements and a reasonable counsel fee.

RULE 83.5

CAMERAS AND RECORDING DEVICES

(a) No one other than officials engaged in the conduct of court business and/or responsible for the security of the Court shall bring any camera, transmitter, receiver, portable telephone or recording device into the Court or its environs without written permission of a Judge of that Court.

Environs as used in this rule shall include the Clerk's office, all courtrooms, all chambers, grand jury rooms, petit jury rooms, jury assembly rooms, and the hallways outside such areas.

(b) The Presiding Judge may waive any provision of this rule for ceremonial occasions and for non-judicial public hearings or gatherings.

RULE 83.6

STUDENT PRACTICE RULE

(a) A law student may, with the Court's approval, under supervision of an attorney, appear on behalf of any person, including the United States Attorney and the New York State Attorney General, who has consented in writing.

(b) The attorney who supervises a student shall:

(1) be a member of the bar of the United States District Court for the Western District of New York;

(2) assume personal professional responsibility for the student's work;

(3) assist the student to the extent necessary;

(4) appear with the student in all proceedings before the Court; and

(5) indicate in writing his or her consent to supervise the student.

(c) In order to be eligible to appear, the law student shall:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two semesters or the equivalent;

(3) be certified by a law school faculty member as qualified to provide the legal representation permitted by these rules. This certification may either be withdrawn by the certifier at any time by mailing a notice to the Clerk or be terminated by the Judge presiding in the case in which the student appears without notice, hearing, or

cause. The termination of certification by action of a Judge shall not be considered a reflection on the character or ability of the student;

(4) be introduced to the Court by an attorney admitted to practice before this Court;

(5) neither ask for nor receive any compensation or remuneration of any kind for his or her services from the person on whose behalf he or she renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a state, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for his or her services;

(6) certify in writing that he or she is familiar with and will comply with the New York State Lawyer's Code of Professional Responsibility as adopted from time to time by the Appellate Divisions of the State of New York, and as interpreted and applied by the United States Supreme Court, the United States Court of Appeals for the Second Circuit, and this Court; and

(7) certify in writing that he or she is familiar with the federal procedural and evidentiary rules relevant to the action in which he or she is appearing.

(d) The law student, supervised in accordance with these rules, may:

(1) appear as counsel in Court or at other proceedings when written consent of the client (on the form available in the Clerk's office), or written consent of the United States Attorney when the client is the United States (or an officer or agency thereof) or of the Attorney General of New York when the client is the State of New York (or an officer or agency thereof) and the supervising attorney's name has been filed, and when the Court has approved the student's request to appear in the particular case to the extent that the Judge presiding at the hearing or trial permits; and

(2) prepare and sign motions, petitions, answers, briefs, and other documents in connection with the matter in which he or she has met the conditions of (d)(1) above; each such document shall also be signed by the supervising attorney.

(e) Forms for designating compliance with this rule shall be available in the Clerk's office. Completed forms shall be filed with the Clerk.

(f) Practice by students pursuant to this rule shall not be deemed to constitute the practice of law within the meaning of the rules for admission to the bar of any jurisdiction.

RULE 83.7

STUDENT LAW CLERKS

(a) A law student may serve as a student law clerk to a District Judge or Magistrate Judge of this Court.

(b) In order to so serve, the law student shall:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two semesters or the equivalent;

(3) neither be entitled to ask for nor receive compensation of any kind from the Court or anyone in connection with service as a student law clerk to a Judge;

(4) if required by the Judge, certify in writing that he or she will abstain from revealing any information and making any comments at any time, except to his or her faculty advisor or to court personnel as specifically permitted by the Judge to whom he or she is assigned, concerning any proceeding pending or impending in this Court while he or she is serving as a student law clerk. A copy of such certification shall be filed with the Clerk.

(c) A Judge supervising a student law clerk may terminate or limit the clerk's duties at any time without notice, hearing, or cause. Such termination or limitation shall not be considered a reflection on the character or ability of the student law clerk unless otherwise specified.

(d) An attorney in a pending proceeding may at any time request that a student law clerk not be permitted to work on or have access to information concerning that proceeding and, on a showing that such restriction is necessary, a Judge shall take appropriate steps to restrict the student law clerk's contact with the proceeding.

(e) For the purposes of Canons 3-A(4) and 3-A(6) of the Code of Judicial Conduct for United States Judges, a student law clerk is deemed to be a member of the Court's personnel.

(f) Forms designating compliance with this rule shall be available in the Clerk's office.

RULE 83.8

MODIFICATION OF RULES

Any of the foregoing rules shall, in special cases, be subject to such modification as may be necessary to meet emergencies or to avoid injustice or great hardship.

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